United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

77-1064

B/S

United States Court of Appeals

For the Second Circuit.

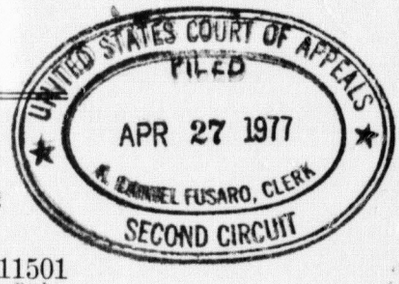
UNITED STATES OF AMERICA,
Appellee,

against

JOHN McGRATH,
Defendant-Appellant.

ON APPEAL FROM JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

APPENDIX.



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THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1977

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT.

- -X

UNITED STATES OF AMERICA,

Appellee,

-against-

JOHN MCGRATH,

Defendant-Appellant.

ON APPEAL FROM JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

- -X

DOCKET ENTRIES.

3-3-76	Before Mishler, Ch J - Indictment filed
3/11/76	Notice of readiness for trial filed
3-11-76	Before BRAMWELL, J - case called - deft & counsel Leonard Meiselman present - deft arraigned and waives reading of the indictment and enters a plea of not guilty - 60 days for motions - case adjd to June 28, 1976 for trial at 10:00 am - deft O.R.
4-23-76	76 M560 inserted in CR file
5/19/76	Notice of motion to sever, dismiss,bill of particulars,etc. ret..5/28/76
5/19/76	Memorandum of law in support of motion filed
5-28-76	Before BRAMWELL, J. -- Case called & adj'd to 6-4-76 at 2:30 P.M. on consent.
6-2-76	Govts Memorandum of Law filed.
6-4-76	Before BRAMWELL, J - case called - motion for severing counts through 10, etc. argued - motion granted and denied as indicated on the record. Settle Order on Notice.

DOCKET ENTRIES

6-28-76	Before BRAMWELL, J- case called - deft & counsel L. Maiselman present - adjd to 9-27-76 for trial.
7-2-76	Stenographer's transcript dtd 6-4-76 filed.
9-13-76	By BRAMWELL, J - Order filed that the Govt provide all witnesses' statements to the defense pursuant to the provisions of T-18, U.S.C. Sec. 3500, sufficiently in advance of the particular witnesses' testimony at trial so as to enable the defense to review such materials without delaying the trial. It is further Ordered that all other provisions of the Court's order of June 4, 1976 remain in full force and effect.
9-27-76	Before Bramwell, J - case called - deft & atty present - Marked ready and passed for trial
10-13-76	Before BRAMWELL, J - case called - deft & counsel present - trial ordered - selection of Jurors begun - trial contd to Oct. 14, 1976
10/14/76	Before BRAMWELL, J.- Case called. Deft &Counsel present. Trial resumed. Defts motion to dismiss cts 11 thru 15 etc. Decision reserved. Trial continued to 10/18/76 at 10:30 a.m.
10-15-76	Before BRAMWELL, J - Amendment to Indictment 76 CR 156 on counts 11 thru 15 filed.
10-18-76	Government's memo of law in opposition filed.
10-18-76	Government's Trial Memo - filed.
10-18-76	Deft's memorandum in support of a motion to dismiss counts 11 through 15 of the indictment etc.
10-18-76	Case Called - Deft & Counsel present. [redacted] Decision rendered on Defts motion to dismiss counts 11 thru 15 etc. Motion denied without prejudice with leave to renew. [redacted] Trial continued to 10-19-76 at 10:30 A.M.
10/19/76	Before BRAMWELL, J.- Case called. Deft & Counsel present. Trial resumed. Trial continued to October 20th, 1976 at 11:00 a.m.
10-20-76	Before Bramwell, J.- Case Called. Deft & Counsel present. Trial Resumed. Trial continued to 10-21-76 at 10:15 A.M.
10/21/76	Before BRAMWELL, J. - Case called. Deft & Counsel present. Trial resumed. Mr. Santo Russo sworn as witness on hearing as to Corporation. Defts application to dismiss indictment. Motion DENIED. Trial continued to 10/22/76 at 2:00 p.m.
10-22-76	Before BRAMWELL, J - case called - deft & atty present - trial resumed - trial contd to Oct. 26, 1976
10-26-76	Before Bramwell, J.- Case Called. Deft & Counsel Present. Trial Resumed. Trial continued to 10-27-76 at 10:15 A.M.
10-27-76	Before Bramwell, J.- Case Called. Deft. & Counsel Present. Trial Resumed. Trial continued to 10-28-76 at 10:00 A.M.

DOCKET ENTRIES

10-28-76	Before Bramwell, J.- Case Called. Deft & Counsel Present. Trial Resumed. Trial continued to 10-29-76 at 2:00 P.M.
10-29-76	Before Bramwell, J.- Case Called. Deft. & Counsel present. Trial resumed. Trial continued to 11-1-76 at 11;00 A.M.
11-1-76	Before Bramwell, J.- Case Called. Deft. & Counsel present. Trial resumed. Government Rests. Deft's motions to Dismiss Indictment etc. Motion Denied. Trial continued to 11-3-76 at 11:00 A.M.
11-3-76	Government's Trial Memorandum - filed.
11-3-76	Before BRAMWELL, J - case called - deft & counsel present - trial resumed - trial contd to 11-4-76
11-4-76	Before BRAMWELL, J - case called - deft & counsel present - trial resumed - 1 subpoena mkd Govt Ex.#79 for Ident. Defts motion to quash subpoena - motion argued and denied - Trial contd to Nov. 5, 1976-1:30 PM.
11-5-76	Before Bramwell, J.- Case Called. Deft. & Counsel present. Trial resumed. Trial continued to 11-8-76 at 10:30 A.M.
11-8-76	Before Bramwell, J.- Case Called. Deft. & Counsel present. Trial resumed. Trial continued to 11-9-76 at 10:30 A.M.
11-9-76	Before Bramwell, J - case called - deft & counsel present - trial resumed - deft rests - Govt rests - trial contd to Nov. 10,1976 at 10:15 A.M.
11-10-76	Before Bramwell, J.- Case Called. Deft. & Counsel present. Trial resumed. Order of Sustenance signed. Trial continued to 11-11-76 at 10:00 A.M.
11-11-76	Order of Sustenance signed by Bramwell, J. - filed.
11-11-76	Before Bramwell, J.- Case Called. Deft. & Counsel present. Trial resumed. Order of Sustenance signed (Lunch). Order of Sustenance signed (Refreshments). Trial continued to November 12, 1976 at 10:00 A.M.
11-12-76	By Bramwell, J.- Order of Sustenance - filed.
11-12-76	By Bramwell, J.- Order of Sustenance - filed.
11-12-76	Before Bramwell, J.- Case Called. Deft. & Counsel present. Trial resumed. Order of Sustenance signed (Lunch). Order of Sustenance signed (Refreshments). Jury came into court at 6:50 P.M. and sent home. Order for Transportation for Jurors signed. Trial continued to 11-15-76 at 10:00 A.M.
11-15-76	By Bramwell, J.- Order of Sustenance - filed.
11-15-76	By Bramwell, J.- Order of Sustenance - filed.
11-15-76	By Bramwell, J.- Order for Transporation - filed.

DOCKET ENTRIES

11-15-76	16 stenographers transcripts filed (dated Oct. 14,18, 19, 20, 21, 22, 26, 27, 28, 29; Nov 1, 3, 4, 5, 8 and Nov. 9, 1976 respectively)
11-15-76	Before BRAMWELL, J - case called - deft & atty present - trial resumed - Jury came into court at 10:15 am for instructions - Jury resumes deliberations at 10:35 am. Order of sustenance signed (lunch-14 persons) Jury came into court at 5 PM and rendered a verdict of guilty on counts 1 through 10 and counts 13, 14 & 15 and not guilty on counts 11 and 12. Jury polled - Jury discharged - Trial concluded - all motions reserved to day of sentence.
11/19/76	Stenographers transcript dated 11/12/76 filed.
12-2-76	Stenographers transcript filed dated 11-11-76 and stenographers transcript filed dated 11-12-76
1-4-77	Stenographer's Transcript dated November 10, 1976 filed.
1/21/77	Before BRAMWELL, J.- Case called. Deft & Counsel present. Imposition of sentence is suspended on count 1 and fined $500.00. Imposition of sentence is suspended on count 2 and fined $500.00, plus the cost of prosectuiton in the sum of $8662.75. Imposition of sentence is suspended on cts 3 thru 10 and deft is fined $500.00 on each count. fines on counts 1 thru 10 are consecutive fines making a total fine of $13,662.75. Deft sentenced to imprisonment for a period of 1 year and 1 day on each of counts 13,14,15 to run concurrent. Bail continued pending appeal.
1/21/77	Judgment & Commitment filed. Certified copies to Marshals.
1-28-77	Notice of appeal filed
1-28-77	Docket entries and duplicate of Notice of appeal mailed to the court of appeals

INDICTMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA

- against -

JOHN McGRATH,

Defendant.

- X

Bramwell J

Cr. No. 76CR156
(T. 18 U.S.C. §1951;
T. 26 U.S.C. §7201,
§7206(1))

3-3-76

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 15th day of April 1970, in the Eastern District of New York, JOHN McGRATH, a resident of West Islip, New York, who during the calendar year 1969 was married, did wilfully and knowingly make and subscribe a United States Joint Income Tax Return, Form 1040, on behalf of himself and his wife for the calendar year 1969, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said income tax return he did not believe to be true and correct as to every material matter, in that the said return reported gross income in the amount of $13,177.86 as wages and salary and additional miscellaneous income of approximately $1,042.91, whereas, as

he then and there well knew and believed, he had received substantial income in addition to that heretofore stated. (Title 26, United States Code, Section 7206(1)).

COUNT TWO

On or about the 15th day of April, 1970 within the Eastern District of New York, JOHN McGRATH, the defendant, a resident of West Islip, New York, who during the calendar year 1969, was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1969, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed in the Eastern District of New York, a false and fradulent joint income tax return, on behalf of himself and his wife, wherein it was stated that their taxable income for said calendar year was the sum of $7,651.17 of which the amount of tax due and owing thereon was the sum of $1,490.50, whereas, as he then and there well knew, their joint taxable income for the said calendar year was the approximate sum of $14,300, upon which said taxable income there was owing to the United States an income tax of approximately $3,000. (Title 26, United States Code, Section 7201).

INDICTMENT

COUNT THREE

On or about the 15th day of April 1971, in the Eastern District of New York, JOHN McGRATH, a resident of West Islip, New York, who during the calendar year 1970 was married, did wilfully and knowingly make and subscribe a United States Joint Income Tax Return, Form 1040, on behalf of himself and his wife for the calendar year 1970, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said income tax return he did not believe to be true and correct as to every material matter, in that the said return reported gross income in the amount of $14,244.35 as wages and salary and additional miscellaneous income of approximately $1,242.64, whereas he then and there well knew and believed, he had received substantial income in addition to that heretofore stated.. (Title 26, United States Code, Section 7206(1)).

COUNT FOUR

On or about the 15th day of April, 1971 within the Eastern District of New York, JOHN McGRATH, the defendant, a resident of West Islip, New York, who during the calendar

year 1970, was married, did wilfully and knowingly attempt to evade defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1970, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed in the Eastern District of New York, a false and fraudulent joint income tax return, on behalf of himself and his wife, wherein it was stated that their taxable income for said calendar year was the sum of $8,888.55 of which the amount of tax due and owing thereon was the sum of $1,614.48, whereas, as he then and there well knew, their joint taxable income for the said calendar year was the approximate sum of $17,300, upon which said taxable income there was owing to the United States an income tax of approximately $3,600. (Title 26, United States Code, Section 7201).

COUNT FIVE

On or about the 15th day of April 1972, in the Eastern District of New York, JOHN McGRATH, a resident of West Islip, New York, who during the calendar year 1971 was married, did wilfully and knowingly make and subscribe a United States Joint Income Tax Return, Form 1040, on behalf

of himself and his wife for the calendar year 1971, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said income tax return he did not believe to be true and correct as to every material matter, in that the said return reported gross income in the amount of $15,803.75 as wages and salary and additional miscellaneous income of approximately $1,333.97, whereas, as he then and there well knew and believed, he had received substantial income in addition to that heretofore stated. (Title 26, United States Code, Section 7206(1)).

COUNT SIX

On or about the 15th day of April, 1972 within the Eastern District of New York, JOHN McGRATH, the defendant, a resident of West Islip, New York, who during the calendar year 1971, was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1971, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed in the Eastern District of New York, a false and fraudulent joint income tax return, on behalf of himself and his wife, wherein it was stated that their taxable

income for said calendar year was the sum of $9,485.71, of which the amount of tax due and owing thereon was the sum of $1,707.21, whereas, as he then and there well knew, their joint taxable income for the said calendar year was the approximate sum of $20,800.00, upon which said taxable income there was owing to the United States an income tax of approximately $4,600. (Title 26, United States Code, Section 7201).

COUNT SEVEN

On or about the 15th day of April 1973, in the Eastern District of New York, JOHN McGRATH, a resident of West Islip, New York, who during the calendar year 1972 was married, did wilfully and knowingly make and subscribe a United States Joint Income Tax Return, Form 1040, on behalf of himself and his wife for the calendar year 1972, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said income tax return he did not believe to be true and correct as to every material matter, in that the said return reported gross income in the amount of $16,292.30 as wages and salary and additional miscellaneous income of approximately $2,250.40, whereas, as he then and

there well knew and believed, he had received substantial income in addition to that heretofore stated. (Title 26, United States Code, Section 7206(1)).

COUNT EIGHT

On or about the 15th day of April, 1973 within the Eastern District of New York, JOHN McGRATH, the defendant, a resident of West Islip, New York, who during the calendar year 1972, was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1972, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed in the Eastern District of New York, a false and fraudulent joint income tax return, on behalf of himself and his wife, wherein it was stated that their taxable income for said calendar year was the sum of $10,852.08, of which the amount of tax due and owing thereon was the sum of $2,007.46, whereas, as he then and there well knew, their joint taxable income for the said calendar year was the approximate sum of $34,300 upon which said taxable income there was owing to the United States an income tax of approximately $8,700. (Title 26, United States Code, Section 7201).

INDICTMENT

COUNT NINE

On or about the 15th day of April 1974, in the Eastern District of New York, JOHN McGRATH, a resident of West Islip, New York, who during the calendar year 1973 was married, did wilfully and knowingly make and subscribe a United States Joint Income Tax Return, Form 1040, on behalf of himself and his wife for the calendar year 1973, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said income tax return he did not believe to be true and correct as to every material matter, in that the said return reported gross income in the amount of $17,525.23 as wages and salary and additional miscellaneous income of approximately $2,595.75, whereas, as he then and there well knew and believed, he had received substantial income in addition to that heretofore stated. (Title 26, United States Code, Section 7206(1)).

COUNT TEN

On or about the 15th day of April, 1974 within the Eastern District of New York, JOHN McGRATH, the defendant, a resident of West Islip, New York, who during the calendar year 1973, was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and

owing by him and his wife to the United States of America for the calendar year 1973, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed in the Eastern District of New York, a false and fraudulent joint income tax return, on behalf of himself and his wife, wherein it was stated that their taxable income for said calendar year was the sum of $11,928.73, of which the amount of tax due and owing thereon was the sum of $2,244.21, whereas, as he then and there well knew, their joint taxable income for the said calendar year was the approximate sum of $33,700, upon which said taxable income there was owing to the United States an income tax of approximately $9,200. (Title 26, United States Code, Section 7201).

COUNT ELEVEN

1. At all times relevant herein, Charlie's Auto Center, North Bellmore, New York, a corporation organized under the laws of the State of New York, was engaged in the business of providing automotive repairs and automotive towing

services. Charlie's Auto Center oper ted as tow truck operators having exclusive towing jurisdiction over a particular segment of the Long Island state parkways, and was subject to the authority, direction, supervision and control of the Long Island State Parks and Recreation Commission.

2. At all times relevant herein, JOHN McGRATH, the defendant, was Park Maintenance Supervisor of the Long Island State Parks and Recreation Commission and, as such, supervised towing operations on the Long Island state parkways. Accordingly, JOHN McGRATH, the defendant, had the power and was reasonably perceived by Charlie's Auto Center and its officers to have the power to adversely affect the towing business of Charlie's Auto Center on the Long Island state parkways.

3. In or about and between January, 1970 and December, 1973, both dates being approximate and inclusive, JOHN McGRATH, the defendant, knowingly, wilfully and unlawfully did attempt to and did obstruct, delay and affect comm ce, as that term is defined in Section 1951(b)(3) of Title 18 of the United States Code, and the movement of materials, equipment, and supplies in interstate commerce by attempting to obtain and obtaining approximately $1,000 in 1970 and $1,500 in each of the years 1971, 1972 and 1973 from Charlie's Auto Center

and its officers, with the consent for such payment having been induced by the wrongful use of fear of economic loss, and under color of official right.

4. The aforesaid conduct of JOHN McGRATH, the defendant, had the potential of affecting commerce and did affect commerce by depleting the assets of Charlie's Auto Center which was regularly engaged in purchasing supplies, equipment, and material from interstate commerce.

5. The aforesaid conduct of JOHN McGRATH, the defendant, further had the potential of affecting commerce and did affect commerce because Charlie's Auto Center regularly performed services in connection with vehicles travelling in interstate commerce and the payments were made to insure that Charlie's Auto Center would be permitted to continue to perform such services. (Title 18, United States Code, Section 1951).

COUNT TWELVE

1. At all times relevant herein, Triple Arc Collision Incorporated, a corporation organized under the laws of the State of New York and, subsequent to 1972, Victor's Auto Center, a sole proprietorship, both located at 63 Smith Street, Hempstead, New York, were engaged in performing automotive repairs and automotive towing services. Triple Arc Collision Incorporated

and Victor's Auto Center operated as tow truck operators having exclusive towing jurisdiction over a particular segment of the Long Island state parkways, and subject to the authority, direction, supervision and control of the Long Island State Parks and Recreation Commission.

2. At all times relevant herein, JOHN McGRATH, the defendant, was Park Maintenance Supervisor of the Long Island State Parks and Recreation Commission, and, as such, had direct responsibility for the supervision of the towing operations on the Long Island state parkways. Accordingly, JOHN McGRATH, the defendant, had the power and was reasonably perceived by Triple Arc Collision Incorporated and Victor's Auto Center and its officers to have the power to adversely affect the towing business of Triple Arc Collision Incorporated and Victor's Auto Center on the Long Island state parkways.

3. In or about and between July, 1968 and December, 1973, both dates being approximate and inclusive, JOHN McGRATH, the defendant, knowingly, wilfully and unlawfully did attempt to and did obstruct, delay and affect commerce, as that term is defined in section 1951(b)(3) of Title 18 of the United States Code, and the movement of materials, equipment, and supplies in interstate commerce by attempting to obtain and

obtaining approximately $6,000 in 1968, $1,000 in 1969 and 1970, and $1,500 in each of the years 1971, 1972 and 1973 from Triple Arc Collision Incorporated and Victor's Auto Center and its officers, with the consent for such payment having been induced by wrongful use of fear of economic loss, and under color of official right.

4. The aforesaid conduct of JOHN McGRATH, the defendant, had the potential of affecting commerce and did affect commerce by depleting the assets of Triple Arc Collision Incorporated and Victor's Auto Center which was regularly engaged in purchasing supplies, equipment and material from interstate commerce.

5. The aforesaid conduct of JOHN McGRATH, the defendant, further had the potential of affecting commerce and did affect commerce because Triple Arc Collision Incorporated and Victor's Auto Center regularly performed services in connection with vehicles travelling in interstate commerce and the payments were made to insure that Triple Arc Collision Incorporated and Victor's Auto Center would be permitted to continue to perform such services. (Title 18, United States Code, Section 1951).

INDICTMENT

COUNT THIRTEEN

1. At all times relevant herein, Alray Collision Corporation, Garden City Park, New York, a corporation organized under the laws of the State of New York, was engaged in the business of providing automotive repairs and automotive towing services. Alray Collision Corporation operated as a tow truck operator having exclusive towing jurisdiction over a particular segment of the Long Island state parkways, and subject to the authority, direction, supervision and control of the Long Island State Parks and Recreation Commission.

2. At all times relevant herein, JOHN McGRATH, the defendant, was Park Maintenance Supervisor of the Long Island State Parks and Recreation Commission, and, as such, had direct responsibility for the supervision of the towing operations on the Long Island state parkways. Accordingly, JOHN McGRATH, the defendant, had the power and was reasonably perceived by Alray Collision Corporation and its officers to have the power to adversely affect the towing business of Alray Collision Corporation on the Long Island state parkways.

3. In or about and between January, 1970 and December, 1973, both dates being approximate and inclusive, JOHN McGRATH, the defendant, knowingly, wilfully and unlawfully

did attempt to and did obstruct, delay and affect commerce, as that term is defined in Section 1951(b)(3) of Title 18 of the United States Code, and the movement of materials, equipment, and supplies in interstate commerce by attempting to obtain and obtaining approximately $1,000 in 1970 and $1,500 in each of the years 1971, 1972 and 1973 from Alray Collision Corporation and its officers, with the consent for such payment having been induced by the wrongful use of fear of economic loss, and under color of official right.

4. The aforesaid conduct of JOHN McGRATH, the defendant, had the potential of affecting commerce and did affect commerce by depleting the assets of Alray Collision Corporation which was regularly engaged in purchasing supplies, equipment and material from interstate commerce.

5. The aforesaid conduct of JOHN McGRATH, the defendant, further had the potential of affecting commerce and did affect commerce because Alray Collision Corporation regularly performed services in connection with vehicles travelling in interstate commerce and the payments were made to insure that Alray Collision Corporation would be permitted to continue to perform such services. (Title 18, United States Code, Section 1951).

INDICTMENT

COUNT FOURTEEN

1. At all times relevant herein, Russo Brothers Service Station, Inc., East Northport, New York, a corporation organized under the laws of the State of New York, was engaged in the business of providing automotive repairs and automotive towing services. Russo Brothers Service Station, Inc. operated as a tow truck operator having exclusive towing jurisdiction over a particular segment of the Long Island state parkways, and subject to the authority, direction, supervision and control of the Long Island State Parks and Recreation Commission.

2. At all times relevant herein, JOHN McGRATH, the defendant, was Park Maintenance Supervisor of the Long Island State Parks and Recreation Commission, and, as such, had direct responsibility for the supervision of the towing operations on the Long Island state parkways. Accordingly, JOHN McGRATH, the defendant, had the power and was reasonably perceived by Russo Brothers Service Station, Inc. and its officers to have the power to adversely affect the towing business of Russo Brothers Service Station, Inc. on the Long Island state parkways.

INDICTMENT

3. In or about and between January, 1970 and December, 1973, both dates being approximate and inclusive, JOHN McGRATH, the defendant, knowingly, wilfully and unlawfully did attempt to and did obstruct, delay and affect commerce, as that term is defined in Section 1951(b)(3) of Title 18 of the United States Code, and the movement of materials, equipment, and supplies in interstate commerce by attempting to obtain and obtaining approximately $1,000 in 1970 and $1,500 in each of the years 1971, 1972 and 1973 from Russo Brothers Service Station, Inc. and its officers, with the consent for such payment having been induced by the wrongful use of fear of economic loss, and under color of official right.

4. The aforesaid conduct of JOHN McGRATH, the defendant, had the potential of affecting commerce and did affect commerce by depleting the assets of Russo Brothers Service Station, Inc., which was regularly engaged in purchasing supplies, equipment and material from interstate commerce.

5. The aforesaid conduct of JOHN McGRATH, the defendant, further had the potential of affecting commerce and did affect commerce because Russo Brothers Service Station, Inc. regularly performed services in connection with vehicles

travelling in interstate commerce and the payments were made to insure that Russo Brothers Service Station, Inc. would be permitted to continue to perform such services. (Title 18, United States Code, Section 1951).

COUNT FIFTEEN

1. At all times relevant herein, Sal Gullo's Garage, Inc., Lindenhurst, New York, a corporation organized under the laws of the State of New York, was engaged in the business of providing automotive repairs and automotive towing services. Sal Gullo's Garage, Inc., operated as a tow truck operator having exclusive towing jurisdiction over a particular segment of the Long Island state parkways, and subject to the authority, direction, supervision and control of the Long Island State Parks and Recreation Commission.

2. At all times relevant herein, JOHN McGRATH, the defendant, was Park Maintenance Supervisor of the Long Island State Parks and Recreation Commission, and, as such had direct responsibility for the supervision of the towing operations on the Long Island state parkways. Accordingly, JOHN McGRATH, the defendant, had the power and was reasonably perceived by Sal Gullo's Garage, Inc. and its officers to have the power to adversely affect the towing business of Sal Gullo's Garage, Inc. on the Long Island state parkways.

INDICTMENT

3. In or about and between January, 1970 and December, 1972, both dates being approximate and inclusive, JOHN McGRATH, the defendant, knowingly, wi'fully and unlawfully did attempt to and did obstruct, delay and affect commerce, as that term is defined in Section 1951(b)(3) of Title 18 of the United States Code, and the movement of materials, equipment, and supplies in interstate commerce by attempting to obtain and obtaining approximately $1,000 each year in 1970 and 1972 and $1,500 in 1971 from Sal Gullo's Garage, Inc. and its officers, with the consent for such payment having been induced by the wrongful use of fear of economic loss, and under color of official right.

4. The aforesaid conduct of JOHN McGRATH, the defendant, had the potential of affecting commerce and did affect commerce by depleting the assets of Sal Gullo's Garage, Inc., which was regularly engaged in purchasing supplies, equipment and material from interstate commerce.

5. The aforesaid conduct of JOHN McGRATH, the defendant, further had the potential of affecting commerce and did affect commerce because Sal Gullo's Garage, Inc. regularly performed services in interstate commerce and the

payments were made to insure that Sal Gullo's Garage, Inc. would be permitted to continue to perform such services. (Title 18, United States Code, Section 1951).

A TRUE BILL.

_____

FOREMAN.

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

AMENDMENT TO INDICTMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against - 76 CR 156

JOHN McGRATH,

Defendant.

- - - - - - - - - - - - - - - - - - X

THE SEPTEMBER, 1975 GRAND JURY DECLARES:

(1.) On March 3, 1976, the September, 1975 Special Grand Jury returned indictment 76 CR 156. Counts Eleven through Fifteen of the aforesaid indictment read as follows:

"COUNT ELEVEN

1. At all times relevant herein, Charlie's Auto Center, North Bellmore, New York, a corporation organized under the laws of the State of New York, was engaged in the business of providing automotive repairs and automotive towing services. Charlie's Auto Center operated as t[illegible] truck operators having exclusive towing jurisdiction over a particular segment of the Long Island state parkways, and was subject to the authority, direction, supervision and control of the Long Island State Parks and Recreation Commission.

AMENDMENT TO INDICTMENT

2. At all times relevant herein, JOHN McGRATH, the defendant, was Park Maintenance Supervisor of the Long Island State Parks and Recreation Commission, and, as such, supervised towing operations on the Long Island state parkways. Accordingly, JOHN McGRATH, the defendant, had the power and was reasonably perceived by Charlie's Auto Center and its officers to have the power to adversely affect the towing business of Charlie's Auto Center on the Long Island state parkways.

3. In or about and between January, 1970 and December, 1973, both dates being approximate and inclusive, JOHN McGRATH, the defendant, knowingly, wilfully and unlawfully did attempt to and did obstruct, delay and affect commerce, as that term is defined in Section 1951(b)(3) of Title 18 of the United States Code, and the movement of materials, equipment, and supplies in interstate commerce by attempting to obtain and obtaining approximately $1,000 in 1970 and $1,500 in each of the years 1971, 1972 and 1973 from Charlie's Auto Center and its officers, with the consent for such payment having been induced by the wrongful use of fear of economic loss, and under color of official right.

4. The aforesaid conduct of JOHN McGRATH, the defendant, had the potential of affecting commerce and did affect commerce by depleting the assets of Charlie's Auto

Center which was regularly engaged in purchasing supplies, equipment, and material from interstate commerce.

5. The aforesaid conduct of JOHN McGRATH, the defendant, further had the potential of affecting commerce and did affect commerce because Charlie's Auto Center regularly performed services in connection with vehicles travelling in interstate commerce and the payments were made to insure that Charlie's Auto Center would be permitted to continue to perform such services. (Title 18, United States Code, Section 1951).

COUNT TWELVE

1. At all times relevant herein, Triple Arc Collision Incorporated, a corporation organized under the laws of the State of New York and, subsequent to 1972, Victor's Auto Center, a sole proprietorship, both located at 63 Smith Street, Hempstead, New York, were engaged in performing automotive repairs and automotive towing services. Triple Arc Collision Incorporated and Victor's Auto Center operated as tow truck operators having exclusive towing jurisdiction over a particular segment of the Long Island state parkways, and subject to the authority, direction, supervision and control of the Long Island State Parks and Recreation Commission.

AMENDMENT TO INDICTMENT

2. At all times relevant herein, JOHN McGRATH, the defendant, was Park Maintenance Supervisor of the Long Island State Parks and Recreation Commission, and, as such, had direct responsibility for the supervision of the towing operations on the Long Island state parkways. Accordingly, JOHN McGRATH, the defendant, had the power and was reasonably perceived by Triple Arc Collision Incorporated and Victor's Auto Center and its officers to have the power to adversely affect the towing business of Triple Arc Collision Incorporated and Victor's Auto Center on the Long Island state parkways.

3. In or about and between July, 1968 and December, 1973, both dates being approximate and inclusive, JOHN McGRATH, the defendant, knowingly, wilfully and unlawfully did attempt to and did obstruct, delay and affect commerce, as that term is defined in section 1951(b)(3) of Title 18 of the United States Code, and the movement of materials, equipment, and supplies in interstate commerce by attempting to obtain and obtaining approximately $6,000 in 1968, $1,000 in 1969 and 1970, and $1,500 in each of the years 1971, 1972 and 1973 from Triple Arc Collision Incorporated and Victor's Auto Center and its officers, with the consent for such payment having been induced by wrongful use of fear of economic loss, and under color of official right.

AMENDMENT TO INDICTMENT

4. The aforesaid conduct of JOHN McGRATH, the defendant, had the potential of affecting commerce and did affect commerce by depleting the assets of Triple Arc Collision Incorporated and Victor's Auto Center which was regularly engaged in purchasing supplies, equipment and material from interstate commerce.

5. The aforesaid conduct of JOHN McGRATH, the defendant, further had the potential of affecting commerce and did affect commerce because Triple Arc Collision Incorporated and Victor's Auto Center regularly performed services in connection with vehicles travelling in interstate commerce and the payments were made to insure that Triple Arc Collision Incorporated and Victor's Auto Center would be permitted to continue to perform such services.

(Title 18, United States Code, Section 1951).

COUNT THIRTEEN

1. At all times relevant herein, Alray Collision Corporation, Garden City Park, New York, a corporation organized under the laws of the State of New York, was engaged in the business of providing automotive repairs and automotive towing services. Alray Collision Corporation operated as a tow truck operator having exclusive towing jurisdiction over a particular segment of the Long Island state parkways, and subject to the authority, direction, supervision and control of the Long Island State Parks and Recreation Commission.

AMENDMENT TO INDICTMENT

2. At all times relevant herein, JOHN McGRATH, the defendant, was Park Maintenance Supervisor of the Long Island State Parks and Recreation Commission, and, as such, had direct responsibility for the supervision of the towing operations on the Long Island state parkways. Accordingly, JOHN McGRATH, the defendant, had the power and was reasonably perceived by Alray Collision Corporation and its officers to have the power to adversely affect the towing business of Alray Collision Corporation on the Long Island state parkways.

3. In or about and between January, 1970 and December, 1973, both dates being approximate and inclusive, JOHN McGRATH, the defendant, knowingly, wilfully and unlawfully did attempt to and did obstruct, delay and affect commerce, as that term is defined in Section 1951(b)(3) of Title 18 of the United States Code, and the movement of materials, equipment, and supplies in interstate commerce by attempting to obtain and obtaining approximately $1,000 in 1970 and $1,500 in each of the years 1971, 1972 and 1973 from Alray Collision Corporation and its officers, with the consent for such payment having been induced by the wrongful use of fear of economic loss, and under color of official right.

4. The aforesaid conduct of JOHN McGRATH, the defendant, had the potential of affecting commerce and did

affect commerce by depleting the assets of Alray Collision Corporation which was regularly engaged in purchasing supplies, equipment and material from interstate commerce.

5. The aforesaid conduct of JOHN McGRATH, the defendant, further had the potential of affecting commerce and did affect commerce because Alray Collision Corporation regularly performed services in connection with vehicles travelling in interstate commerce and the payments were made to insure that Alray Collision Corporation would be permitted to continue to perform such services. (Title 18, United States Code, Section 1951).

COUNT FOURTEEN

1. At all times relevant herein, Russo Brothers Service Station, Inc., East Northport, New York, a corporation organized under the laws of the State of New York, was engaged in the business of providing automotive repairs and automotive towing services. Russo Brothers Service Station, Inc., operated as a tow truck operator having exclusive towing jurisdiction over a particular segment of the Long Island state parkways, and subject to the authority, direction, supervision and control of the Long Island State Parks and Recreation Commission.

AMENDMENT TO INDICTMENT

2. At all times relevant herein, JOHN McGRATH, the defendant, was Park Maintenance Supervisor of the Long Island State Parks and Recreation Commission, and, as such, had direct responsibility for the supervision of the towing operations on the Long Island state parkways. Accordingly, JOHN McGRATH, the defendant, had the power and was reasonably perceived by Russo Brothers Service Station, Inc. and its officers to have the power to adversely affect the towing business of Russo Brothers Service Station, Inc. on the Long Island state parkways.

3. In or about and between January, 1970 and December, 1973, both dates being approximate and inclusive, JOHN McGRATH, the defendant, knowingly, wilfully and unlawfully did attempt to and did obstruct, delay and affect commerce, as that term is defined in Section 1951(b)(3) of Title 18 of the United States Code, and the movement of materials, equipment, and supplies in interstate commerce by attempting to obtain and obtaining approximately $1,000 in 1970 and $1,500 in each of the years 1971, 1972 and 1973 from Russo Brothers Service Station, Inc. and its officers, with the consent for such payment having been induced by the wrongful use of fear of economic loss, and under color of official right.

AMENDMENT TO INDICTMENT

4. The aforesaid conduct of JOHN McGRATH, the defendant, had the potential of affecting commerce and did affect commerce by depleting the assets of Russo Brothers Service Station, Inc., which was regularly engaged in purchasing supplies, equipment and material from interstate commerce.

5. The aforesaid conduct of JOHN McGRATH, the defendant, further had the potential of affecting commerce and did affect commerce because Russo Brothers Service Station, Inc. regularly performed services in connection with vehicles travelling in interstate commerce and the payments were made to insure that Russo Brothers Service Station, Inc. would be permitted to continue to perform such services. (Title 18, United States Code, Section 1951).

COUNT FIFTEEN

1. At all times relevant herein, Sal Gullo's Garage, Inc., Lindenhurst, New York, a corporation organized under the laws of the State of New York, was engaged in the business of providing automotive repairs and automotive towing services. Sal Gullo's Garage, Inc., operated as a tow truck operator having exclusive towing jurisdiction over a particular segment of the Long Island state parkways, and subject to the authority, direction, supervision and control of the Long Island State Parks and Recreation Commission.

AMENDMENT TO INDICTMENT

2. At all times relevant herein, JOHN McGRATH, the defendant, was Park Maintenance Supervisor of the Long Island State Parks and Recreation Commission, and, as such, had direct responsibility for the supervision of the towing operations on the Long Island state parkways. Accordingly, JOHN McGRATH, the defendant, had the power and was reasonably perceived by Sal Gullo's Garage, Inc. and its officers to have the power to adversely affect the towing business of Sal Gullo's Garage, Inc. on the Long Island state parkways.

3. In or about and between January, 1970 and December, 1972, both dates being approximate and inclusive, JOHN McGRATH, the defendant, knowingly, wilfully and unlawfully did attempt to and did obstruct, delay and affect commerce, as that term is defined in Section 1951(b)(3) of Title 18 of the United States Code, and the movement of materials, equipment, and supplies in interstate commerce by attempting to obtain and obtaining approximately $1,000 each year in 1970 and 1972 and $1,500 in 1971 from Sal Gullo's Garage, Inc. and its officers, with the consent for such payment having been induced by the wrongful use of fear of economic loss, and under color of official right.

4. The aforesaid conduct of JOHN McGRATH, the defendant, had the potential of affecting commerce and did

AMENDMENT TO INDICTMENT

affect commerce by depleting the assets of Sal Gullo's Garage, Inc., which was regularly engaged in purchasing supplies, equipment and material from interstate commerce.

5. The aforesaid conduct of JOHN McGRATH, the defendant, further had the potential of affecting commerce and did affect commerce because Sal Gullo's Garage, Inc. regularly performed services in interstate commerce and the payments were made to insure that Sal Gullo's Garage, Inc. would be permitted to continue to perform such services. (Title 18, United States Code, Section 1951)."

(2.) The September, 1975 Special Grand Jury, which returned the aforesaid indictment, hereby amends and authorizes the United States District Court to amend all references to the "Long Island State Parks and Recreation Commission" to read as follows:

"Long Island State Park Commission prior to approximately September, 1972 and the Long Island State Park and Recreation Commission subsequent to approximately September, 1972."

FOREMAN.

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

36a

GOVERNMENT'S LIST OF WITNESSES.

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

JOD:KJK:pal
F.753165

United States Department of Justice

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, N. Y. 11201

May 4, 1976

Leonard Meiselman, Esq.
170 Old Country Road
Mineola, New York 11501

Re: United States v. John McGrath
76 CR 156

Dear Mr. Meiselman:

I am writing to inform you of the prospective government witnesses in the above-captioned case. The following is a list of witnesses presently known to the government:

Randy Taylor - Address unknown
Victor LaGuardia, 533 Caldonia Rd., Dix Hills, NY
Charles Ancona, 107 Watersedge, East Hampton, NY
Santo Russo, 19 Sarina Drive, Commack, New York
Ralph Signoriello, 7 Roberts Lane, Syosset, NY
Salvatore Gullo, 12 Jerome Street, Lindenhurst, NY
John Cardalena, Revenue Agent, IRS
George B. Tierney, Special Agent, IRS
Richard Marlow, Special Agent, IRS
Salvatore Contarino, Special Agent, IRS
Stanley Sher, 1780 E. 23 St., Brooklyn, NY
Bernard Kurts, 814 MacArthur Drive, Pittsburg, Pa.
Van Kaufman, 100 Cainshill Road, Ridgfield, Conn.
Richard Russack, Sawmill Lane, Greenwich, Conn.
Sy Hyman, c/o Health Chem., 1107 B'way., NYC
Ely Stein, 5 Horizon Road, Fort Lee, New Jersey
Frank Flynn, 162 East Concourse, Brightwaters, NY
Pieter Van Rikxoord, 285 Greeley Ave., Sayville, NY
Harold Klein, 57-16 244th St., Douglaston, NY

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GOVERNMENT'S LIST OF WITNESSES

In addition, the Government will call representatives from various banks where Mr. McGrath has accounts, and all tenants, lessees and real estate agents enumerated in leases and other documents disclosed pursuant to discovery.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By: Kenneth J. Kaplan
Kenneth J. Kaplan
Assistant U.S. Attorney

GOVERNMENT'S 3500 MATERIAL RE RANDOLPH W. TAYLOR, JR.

Memorandum of Interview

In re: John Mc Grath, et al.

Date: October 7, 1974

Time: 6:45 P.M.

Place: Starfish Boat & Motor Sales
369 E. Main St.
E. Islip, New York

Present: S.A. Richard Marlow
S.A. Nicholas Tsotsos
S.A. George B. Tierney
Randy Taylor- Witness

Taylor stated that during the years 1960 thru July of 1971 he was a member of the Long Island State Parkway Police and that due to certain irregularities which he became aware of, he was harrassed by his superiors and eventually forced to resign.

He enumerated on these irregularities as follows;

1. During the Xmas season of 1967, after completing a Mid-night to 8:00 am shift, his personnal car broke down and failed to start. He had the car towed to Charlies Auto Center Inc. for repairs. While there, at approximatelly 8:30 am, He observed Nicholas Landers, who was then the Chief of the Parkway Police leaving Charlies Auto Center Inc. carrying two unopened cases of Johnie Walker Red Label. Landers put the liquor into his car and left the area. Neither Landers nor Ancona ever said anything to him concerning the incident, although he is positive that both of them were aware that he saw Landers and the liquor. He did state, however, that after the incident, Landers did start to harass him and give him unpleasant duties.

2. Due to financial difficulties, he (Taylor) took a part-time job at Sal's Garage in 1968. He work mostly nights as a dispatcher and cleaner. Sal's Garage is located on South Travis St. in Lindenhurst and is owned by Sal Gullo Jr., who during his period of employement had a contract for towing with the Park Commission. Some time in the later part of 1968, he was working at Sal's during the day arrainging towing tickets, when he saw Sal and his wife (Jenny) counting money. Sal took some of the money, the exact amount he does not know but it was substantial and in 20's, and put it into a white business envelope. Sal then put the envelope into his shirt pocket. Approximatelly 10 minutes later, he observed John Mc Grath arriving

GOVERNMENT'S 3500 MATERIAL RE RANDOLPH W. TAYLOR, JR.

at Sal's. Sal Gullo took the white envelpoe from his pocket and gave it to McGrath. Mc Grath saw him (Taylor) and left immediatelly. Neither Gullo nor Mc Grath ever said anything to him concerrning the incident. However, the next day he was called into Lander's office and was ordered by him to quit his job at Gullo's,as it was a conflict of interest. After this incident, he was further harassed by Landers including being arrested by the Parkway Police twice on phony charges. The arrests were thrown out of court.

In addition, to what Taylor provided above, he was asked if he had any other information concerrning payoffs to Mc Grath by Gullo or others who had Park Commission contracts. He stated that he did not and that he knew very little about Mc Grath or any of the other Park Commissioners.

He did state, however, that in addition to Charlies Auto Center Inc., Charles Ancona did own a Used Car Lot or Showroom in Hempstead.

In addition to Sal's Garage, the other tow contractors were Charlies Auto Center Inc., Bill Schmidt (who lost his contract to Tripel-Arc), Al-Ray Collision- Jericho Turnpike and County Court House Rd. Mineola, Russo Brothers of Comack, and Higby Collision who took over when Gullo lost his contract.

Richard Marlow

Nicholas Tsotsos

George B. Tierney

So, in reading Rule 8-A we must last read it in connection with Rule 14. I call your Honor's attention to page 3 of our brief where the rule specifically and obviously Rule 14 refers to a severance in the event that there is prejudice.

I would also add this; it appears that in most of these cases the question of severance is addressed to the discretion of the Court. It would also appear in most of these cases, your Honor, that where there appears to be doubt whether a fair trial may be had, that the Court's had by and large ruled in favor of the defendant.

So, that if there is going to be a decision, it will be a decision on the merits of each charge, not on a questionof procedural defects.

THE COURT: Mr. Kaplan, anything?

MR. KAPLAN: On that point, your Honor?

THE COURT: Yes.

MR. KAPLAN: No.

THE COURT: As to that issue, the motion is denied. The Court does not feel that there is prejudice by the joinder of offenses in connection with this proceeding.

I will hear you on your next argument.

MR. MEISELMAN: I respectfully except, your

* * *

come out.

And with those admonitions, I pray that you will do so.

I thank you very much, ladies and gentlemen.

THE COURT: All right. Thank you.

Do you wish to proceed?

MR. KAPLAN: Yes.

MR. MEISELMAN: May we have a sidebar, your Honor.

THE COURT: Surely.

(The following took place at the sidebar.)

MR. MEISELMAN: I would respectfully request, your Honor, that the jury be excused for a while. I have a motion that I would like to make with respect to Mr. Kaplan's opening statement and the indictment.

THE COURT: Surely.

(End of sidebar.)

THE COURT: Ladies and gentlemen, we are going to take a short adjournment. While you are away from the Courtroom, please do not discuss the case at all under any circumstances.

The jury may leave for a short adjournment.

(Whereupon, the jury retired from the Courtroom.)

THE COURT: Yes sir, Mr. Meiselman.

MR. MEISELMAN: Your Honor, I did not make such request before the opening, but prior to my making the motion, I suggest to your Honor, may I ask for a ruling thatall witnesses be excluded from the Courtroom.

THE COURT: Yes. All witnesses for the Government are to be --

MR. KAPLAN: Except for Mr. Contarino.

THE COURT: Who.

MR. KAPLAN: Mr. Contarino.

THE COURT: He is the agent on the case and he is permitted to be in the Courtroom.

MR. MEISELMAN: Well then, I may also make that request with respect to Mr. McElroy, who may testify and -- he is assisting counsel.

THE COURT: He has a right to be here.

MR. MEISELMAN: I am also talking about Mr. McElroy.

THE COURT: You brought him in. I don't know anything about him.

MR. MEISELMAN: I say, your Honor --

THE COURT: Do you want to put him out?

MR. MEISELMAN: No, I don't wish to.

MR. KAPLAN: Is he going to be a witness?

MR. MEISELMAN: He may. But he is going to be assisting me in this trial as a --

MR. KAPLAN: Is he going to be here throughout the whole trial.

MR. MEISELMAN: Yes.

THE COURT: Listen, I don't see any problem at this point. But he has a right to have an agent with him.

MR. MEISELMAN: All right.

Your Honor, may I respectfully submit a brief.

THE COURT: Yes, surely.

MR. MEISELMAN: I think that's the one. Yes.

THE COURT: Do you have a copy for Mr. Kaplan.

MR. MEISELMAN: Yes, I do.

Your Honor, based upon the opening to the jury by the U.S. Attorney and the indictment, the defendant moves to dismiss Counts 11 through 15 of the indictment pursuant to the Rules of Criminal Procedure 7(c)(1), the Fifth and Sixth Amendments of the United States Constitution, on the grounds that the same are fatally defective as a matter of law, and the Court does not have jurisdiction to try the defendants on these counts.

I have in my brief, your Honor, on Page 2, excerpted the pertinent substance -- I am sorry --

the pertinent verbatim portions of Counts 11 through 15. And I respectfully call -- respectfully call your Honor's attention that most of the counts are almost identical, and reading one will --

THE COURT: Do you mean 11 through 15?

MR. MEISELMAN: I have set them all forth.

THE COURT: This is true.

MR. MEISELMAN: But if we were to read any one, I think that we would see what I am driving at quickly.

Now, Count 11, Paragraph 1, starts off by saying that at all times relevant herein, Charlie's Auto Center was engaged in the business of -- and so on -- over a particular segment of the Long Island State Parkways and was -- and this is important -- subject to the authority, direction, supervision and control of the Long Island StateParkway and Recreation Commission.

Paragraph 2 asays, at all times relevant herein, John McGrath, the defendant -- and I quote -- was Park Maintenance Supervisor of the Long Island State Park and Recreation Commission, and as such, supervised towing operations on the Long Island State Parkways and -- close quote -- and quote, accordingly, John McGrath had the power, and so on.

Your Honor will note that I am calling attention to the fact -- no -- to two facts really -- three. They are these.

That at all of the relevant times, the parkways, which are relevant to -- relevant to each operator or tower, as alleged in the indictment, was subject to the authority's direction, supervision and control of Long Island State Park Commission. And the other pertinent fact is that at all times relevant, John McGrath was the Park Maintenance Supervisor of the Long Island State Park and Recreation. And, accordingly, have the power to do what they are claiming he is doing.

Those are the facts which the indictment alleges. Those are the facts which Mr. Kaplan sets forth in his opening to the jury.

As incredible as it may seem to this Court, and as it seemed to me until a short time ago, during the years 1968, '69, '70, '71 and up to September 1, 1972, the Long Island State Parks and Recreation Commission was not in existence. It was not a body. It had not yet been legislated into existence.

Prior to September 1, as I stated in my brief, the Long Island State Parks had been owned, administered, supervised by the Long Island State

Park Commission.

And, your Honor, I state to you that by making that statement, I made an error. Because I found out with even less time than with reference to the Parks & Recreation Commission, that it was not administered by Long Island State Parks Commission; that there were many commissions involved: The Jones Beach State Parkway Authority, the Bethpage State Park Authority, and so on.

So that all of the parkways are segmented into various authorities, each of which is autonomous and each of which owned and controlled by law -- I am not now going into the facts, your Honor. I will site chapter and verse -- are owned and controlled by law. As the law sets forth, they own and control it under the Public Authority Law of the State of New York.

I need not point out to your Honor that an authority, a public authority is, in effect, an autonomous body made as such for a very definite reason. And the Long Island State Parks Commission was by law, in effect, an autonomous body.

The Long Island State Park Commission had been created pursuant to the laws of 1928, under Section 672 of the Conservation Law of the State of New York and under the jurisdiction of the Conservation

Department of the State of New York. The powers of the Long Island State Park Commission was set forth in Conservation Law, Section 777.

And without my wearying the Court, Section 777 is exceptionally lengthy, and sets forth the full powers of the Long Island State Park Commission. And they were very extensive. To own, to operate, control, construct, maintain, acquire by condemnation. They could do practically anything that an authority could do. And they were independent of any other body. They did not and were not required to report to any other body, except in the ordinary course of Government affairs and the courtesy of interdepartmental channels.

In 1972 the legislature enacted a completely new law known as the Parks and Recreation Law. And pursuant to the Parks and Recreation Law, Section 7.01 Subdivision 9, and 7037, the New York State -- and here, your Honor, I trust you don't believe I am engaging in semantics, but I am trying, because I must --

THE COURT: No. You have to clarify it.

MR. MEISELMAN: The NEw York State Department of Recreation and Parks designated Nassau and Suffolk as a geographical area and designated a body

which it created as the Long Island State Parks and RecreationCommission under the direct direction of the State Commissioner of Parks and Recreation in Albany, whose office is created and under the direction of the executive department.

If your Honor would read the Parks and Recreation Law, Section 7.11, your Honor would find that the Long Island State Parks and Recreation Commission was to serve mainly in an advisory capacity, all subject to the direction of the State Commissioner of Parks and Recreation in Albany. The powers of the Long Island State Park and Recreation Commission were essentially limited compared to the executive, autonomous powers given by the Conservation Law to the pre-existing Long Island State Parks Commission.

Effective September 1, 1972, the Long Island State Park Commission ceased its existence.

An example of some of the powers, for instance. Long Island State Park Commission has the power and the authority to enact rules and regulations. The Parks and Recreation Commission does not. It abides by the rules and regulations made by the commissioner in Albany.

Under the Long Island State Parks Commission,

they appointed their own employees. Parks and Recreation may not do that. It is now New York State Park Police.

And finally, but not the least, Long Island State Park Commission has the authority to condemn. The Long Island State Parks and Recreation Commission does not.

In short, the Long Island State Parks Commission was an autonomous body created by the conservation law and existing under the conservation law.

It can be seen, not as a matter of fact, but as a matter of law, that prior to September 1, 1972, contrary to the allegations of the indictment and contrary to the opening statement by the prosecutor, it was and would have been impossible for the defendant to be -- and I quote -- the Park Maintenance Supervisor for the Long Island State Parks and Recreation Commission, close quote, since such a body had not yet been created, was not in existence and could not, of course, had the defendant as an employee.

The question might then be raised, why not amend the indictment.

I confess that that statement is my straw man which I just raise to give the rest of my argument.

dds

DDS/tk

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(The following continued to be heard in the absence of the jury.)

MR. MEISELMAN: The leading case with which I think we are all familiar is ex parte Bain, decided by the United States Supreme Court in 1887. It is a long, well-reasoned case which makes no bones about strongly enunciating th powers of the Court or the prosecutor with respect to amending an indictment, and why they cannot and should not.

I will not weary the Court with reading what I believe are the pertinent portions of those principles enunciated by the Court, but they appear at page 10 through page 12 of my brief.

It might then be said, as is so often said, your Honor, well, here is a case decided in the 1880's and we are living in the 1970's. And I would confess, your Honor, that ordinarily I would be hard put to defend it except by saying that the Constitution is the Constitution is the Constitution. But then along came Stroine against the United States, decided by the Supreme Court of the United States in 1960, in which the defendant was charged with violation of the Hobbs Act, the very same act with which I am now dealing in the five counts at bar. In that case the defendant was charged with interference with commerce in the delivery of sand in connection with

the construction of a steel plant.

At the trial, although not charged in the indictment, the Government attempted to and over objection was allowed to prove or to introduce evidence that there was also interference with commerce in connection with future shipments of steel which might have emanated from the plant which was to be completed with the sand.

The Supreme Court of the United States made no bones about it. Although I cited at length their opening statement with respect to the reiteration of the principles of Bain, appearing on page 215, where they say:

"...Ever since ex parte Bain was decided in 1887 it has been the rule that after indictment has been returned its charges may not be broadened through amendment except by the grand jury itself..."

And they continue at page 217:

"...The Bain case, which has never been disapproved, stands for the rule that a Court cannot permit a defendant to be tried on charges that are not made in the indictment against him..."

Indeed, an interesting part of the Stroine case was at page 219, where the Court said:

"...We cannot know whether the grand jury would

have included in its indictment the charge that the prosecutor wants..."

And, your Honor, yesterday afternoon I was given some grand jury minutes with respect to the testimony of the witness Antona. It is interesting to note, and it is amazing to me, from the limited minutes that I saw, how the grand jury could possibly have returned an indictment naming McGrath as Parks Maintenance Supervisor of the Long Island State Parks and Recreation Commission for it is not even mentioned.

I have also cited similar cases which followed Stroine and which come up to 1975. All of these cases reiterate and re-enunciate Ex parte Bain and Stroine.

Now, it might be said again, I have a straw man, your Honor, if I may be permitted, it might be said that this is a mere typographical error. I don't know how it can be said without tongue in cheeck, but it can be said. The courts have held, however, that what might appear to be a typographical error is not a typographical error, and it doesn't matter whether it is or not.

I saw a case which somewhat astonished me when I read it, and when I saw it I said, "Hallelujah, I have the exact case for the Court." It does the researcher's heart some good once in a while to get

such a case.

The United States against the Consolidated Laundries Corporation, decided by this Circuit in 1961 the Court dismissed the indictment against the defendant. The defendant -- and unless your Honor follows me, I am afraid you will lose me as I lost that page -- after reading it three or four times I still didn't see it -- the defendant was indicted as -- without punctuation unless I state it -- "Standard Coat Apron and Linen Service, Inc.," and the prosecution tried to prove a case by amending the indictment to read, "Standard Coat, Apron and Linen, Inc." And the United States Court of Appeals in this Circuit said, "Uh,uh," that is not allowed, and the indictment is dismissed.

Your Honor, may I briefly sum what I have said. As we have seen, it would have been impossible for the defendant to have been an employee of the Long Island State Parks and Recreation Commission prior to September 1, 1972.

It would be improper to have him now prosecuted as Park Maintenance Supervisor for the Long Island State Parks Commission, since that is not the office they are claiming he held and under the color of right on which he had stolen money. The error goes far beyond the categories of misnomer or a typographical error. It involves these

substantial allegations contained in the indictment necessary to charge the crime.

The allegations of the indictment respecting the defendant's status as a public official are necessary prerequisites pertaining to the very substance of the offense charged.

And I refer your Honor respectfully to the case of United States against Trotta. And to make it a sine qua non he cannot be charged with extortion under color of official right unless he holds public office. They cannot prove public office until they show the public office, and that public office must be as alleged in the indictment and connected with the public right.

To permit an amendment of this indictment so as to contain any changes or interpretations that the Prosecutor may desire, would erode and be contrary to the principles enunciated as far back as 1887, and which have been held to be correct as late as 1975. It would make the action of the grand jury either meaningless, or trivial, or inconsequential. That was neither the design nor the intention of the United States Constitution.

Accordingly, your Honor, we respectfully submit that charges eleven through fifteen of the indictment are fatally defective, and based upon such indictment

and based upon the opening statement of the Prosecutor to the jury, we move for their dismissal.

THE COURT: Thank you, Mr. Meiselman. I will hear Mr. Kaplan. Thank you very much.

MR. KAPLAN: Your Honor, I do not want to trouble the Court at great length as Mr. Meiselman did about this issue because in our view --

THE COURT: The way I would see it is you have to address yourself to it. If you want some time to do that, I will give you time, because this issue must be addressed before we can proceed with this case. If you want time, I will give you time to research it and to present a memorandum of law, if you wish, to the Court. But the case cannot proceed until this particular issue is disposed of. So if you want to argue it, you may proceed.

MR. KAPLAN: Yes, I would like to argue it, your Honor.

THE COURT: Yes, surely.

(continued next page)

MR. KAPLAN: As I understand, the only point that Mr. Meiselman raises is that prior to 1972 the Long Island State Parks & Recreation Commission was known as the Long Island State Park Commission. After 1972 it was known as the Long Island State Parks & Recreation Commission. So the words "and Recreation" have been interposed.

Now, as far as the duties and functions of the Long Island State Park Commission and the Long Island State Parks & Recreation Commission it is irrelevant. The only issue in this case is whether he had power as a Park Maintenance Supervisor of that Babylon Office known de facto as Long Island State Park Commission and Long Island State Parks & Recreation Commission.

THE COURT: I am not so sure it is irrelevant.

MR. KAPLAN: I would like t4 argue that point.

THE COURT: I think Mr. Meiselman was quite persuasive. And I think you are going to have to address yourself to it because it is something that the Court has got to handle before this case proceeds. And it seems to be a serious issue with broad implications for the Government.

MR. KAPLAN: Well, you7 Honor, we certainly can submit a memorandum of law. However, I would

like to argue at length first off --

THE COURT: You may if you wish, if you are prepared. Are you prepared?

MR. KAPLAN: I am prepared to argue. And certainly we would research the issue at length.

THE COURT: All right.

MR. KAPLAN: But I would like to advise the Court that first of all as far as dismissal of the accounts, the years 1972 and 1973, it was the Parks & Recreation Commission. So as to what it was before would be irrelevant. As to those years certainly testimony would come in. As to the other years it would be --

THE COURT: I hope you are right on that issue for your sake. I am not deciding it. I am waiting until I hear your side of this argument and get the law from you which you feel to be applicable --

MR. KAPLAN: Well, your Honor, we feel --

THE COURT: -- on this issue.

MR. KAPLAN: Well, your Honor, we feel the law to be applicable is United States v. Trotta, which is 525 F. 2d --

THE COURT: Which is the case Mr. Meiselman cited.

MR. KAPLAN: Absolutely. He cited the same case.

In that case, Trotta, the Second Circuit citing the Supreme Court decision, said that an indictment is sufficient if it first contains the elements of the offense charged and fairly informs the defendant of the charge against him which he must defend; and, second, enables him to plead an acquittal or conviction and bar future prosecution for the same offense.

So what do we have here? First of all, the Parks & Recreation Commission is not an element of the offense.

Second of all, it is no prejudice to the defendant. The issue of prejudice is the only one here. So it is the Park Commission or the Parks & Recreation Commission. He was put on notice way before the opening statements of the charges in the indictment, and that he was Park Maintenance Supervisor of what we call the Parks & Recreation Commission or the Park Commission, it was the same position. He didn't change positions. They just changed the name. So what prejudice inures to the defendant?

We say none.

If there is no prejudice, and if double jeopardy is not involved, obviously the Court of Appeals would not entertain a second prosecution in a case

of this nature, your Honor, we do not see what possible grounds can be relied upon.

First of all we have an immaterial variance at best, which in many cases -- I do not have them before me -- but in many cases an immaterial variance would go to the jury if it is not an element of the offense.

Second of all, it is no prejudice.

And it was -- I should say it was a tactical decision on Mr. Meiselman's part to do what he did. He let the jury be sworn and he waited for opening statements to make his motion. He could have made this motion six months ago. He knew what was happening here. So it is obvious that Mr. Meiselman was trying to engage in a bit of strategy by letting the jury be sworn and then making a motion on a matter which is an immaterial --

THE COURT: That is obvious. But he has a right to do that.

MR. KAPLAN: But, your Honor, the question is prejudice. As we read Trotta, that matter is an immaterial variance. It is not an element of the offense. The elements of the offense are spelled out. The defendant is put on notice of the charges against him. Whether it is the Long Island State Park Commission or Parks & Recreation Commission

is immaterial.

We said he had power in his official capacity to control the towing operations on the parkway. And in fact he did. We have contracts of 1965 which say Long Island State Park Commission, and John McGrath was Park Maintenance Supervisor. We have documents to prove that fact.

Now all we are talking about is the word or words "and Recreation."

Now I do not see in the world what variance would be material here such as those two words.

And there has to be a showing of prejudice, your Honor, with a material variance.

We would provide your Honor the cases as to the immaterial variances. I believe this is engaging in sophistry.

THE COURT: What I think we may do is we may adjourn the case and send the jury home and permit you time to research the problem and to present the Court with the Government's side of this case because this is a matter that should be attended to before the case goes forward, and the Court should make a decision, whatever it may be, as to just what may be done as t4 these particular counts of the indictment Mr. Meiselman has addressed himself to.

MR. KAPLAN: Your Honor, we would take the position that if jeopardy has attached it wouldn't make any difference. We have witnesses at this point testifying.

We are prepared to research the point. We will research the point.

THE COURT: Yes, you will have to abide by the Court's decision. I wouldn't want to go forward until this is decided, and I wouldn't want to go forward until you had properly presented it to the Court because there is no other way, to be very frank with you, there is no other way, because if we go forward and proof starts to come in as to these counts that shouldn't properly be here, of course, that is the purpose.

MR. KAPLAN: Very well, your Honor. We will research it.

THE COURT: There is no question in my mind that this is the proper way to do it.

What we will do is bring in the jury and we will adjourn the case until tomorrow. I will give the Government an opportunity to research the issue that you have presented, and they can present their side to the Court. And tomorrow morning we can go forward with what we have to do.

Well, tomorrow is Friday -- tomorrow afternoon -- tomorrow morning I have my motion and sentence calendar so I would not be able to take the case tomorrow morning.

Very well, with the court calendar, with what is on for tomorrow, which is Friday, we may have to adjourn this trial until Monday because there are too many things before the Court. And the Court will have to take time on this issue because this is very important. Under the circumstances we will adjourn the case until Monday. We won't do any further work with the jury today.

MR. MEISELMAN: Your Honor, may I respectfully say that since we are adjourning until Monday, may I be served by Friday with briefs?

THE COURT: Yes, the Government is to serve Mr. Meiselman by noon tomorrow.

MR. KAPLAN: Your Honor, we may not be able to do that. He served us with a brief at the time of the opening.

THE COURT: You will be able to do it. It may be a little bit of a problem but you will work it out. You have until noon tomorrow to serve your reply brief on Mr. Meiselman, and see that it is taken care of.

You are out on the Island, aren't you?

MR. MEISELMAN: Yes, and my address is changed. It is now 54 Willis Avenue, Mineola.

THE COURT: Under the circumstances they have the additional travel problem. Could you get someone to pick it up?

MR. MEISELMAN: I will have someone in Mr. Kaplan's office at noon tomorrow.

THE COURT: All right. At noon tomorrow it will be ready in Mr. Kaplan's office and Mr. Meiselman will pick it up there.

Then we will adjourn this case until Monday. Let me see how my Monday calendar is. It will be ten-thirty on Monday.

MR. MEISELMAN: Ten-thirty, your Honor?

THE COURT: Ten-thirty on Monday.

All right, we will bring in the jury and have an adjournment of the case.

All right, bring the jury in, please.

Decision is reserved as to the motion.

(The jury thereupon returned to the courtroom at 12:10 o'clock p.m.)

THE COURT: Ladies and gentlemen, a problem concerning the case has come before the Court. The Court will have to go into this problem and it will

have to go into the problem before the case can proceed. So under the circumstances we are going to adjourn for the day.

Now tomorrow is Friday and in the morning I have my sentence and motion calendar. I have calendars all day tomorrow, Friday. So you will leave and you are not to return until Monday, at 10:30, and we will proceed with the case. By that time the issue that is before the Court should have been resolved and the case can go forward.

Now, whileyou are away from the Court please do not discuss this case with anyone on or off the jury.

You may leave for the day. Now it is Monday at ten-thirty. You will assemble in the jury room. The clerk will bring you in. The jury may leave. Have a nice weekend.

(The jury thereupon retired from the courtroom at 12:11 o'clock p.m.)

THE COURT: Anything further?

MR. KAPLAN: Nothing further, your Honor.

MR. MEISELMAN: Thank you, your Honor.

THE COURT: Have a nice weekend.

MR. MEISELMAN: Thank you, your Honor.

(Thereupon at 12:13 o'clock p.m. an adjournment was taken to Monday, October 18, 1976 at 10:30 a.m.)

I N D E X

Government's Exhibits		For Id.
3500-1	Surveillance memo	3
3500-2	Grand Jury Minutes	3
3500-3	" " "	3
3500-4	" " "	3
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3500-6	Document	3

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- : 76-CR-156

JOHN MC GRATH, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

October 18, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE HENRY BRAMWELL, U.S.D.J.

MICHAEL PICOZZI
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
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-and-
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-and-
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THE COURT: Good morning, Mr. Meiselman.

MR. MEISELMAN: Good morning.

THE COURT: Good morning, Mr. Kaplan.

MR. KAPLAN: Good morning.

THE COURT: Do you have anything further to present on the issue?

MR. MEISELMAN: I have a short discussion.

THE COURT: Some argument?

MR. MEISELMAN: Yes.

THE COURT: We will take that now.

MR. KAPLAN: Does your Honor want to hear me first?

THE COURT: It's his motion, he is supposed to go first.

MR. MEISELMAN: I might add, your Honor, I looked forward to a restful weekend but instead I was in the law library.

THE COURT: I imagine so.

MR. MEISELMAN: I might also add, your Honor, that although your Honor directed Mr. Kaplan to serve us with a memorandum by noon, we were finally served with a memorandum here in Brooklyn at 4:15.

THE COURT: It was late.

MR. MEISELMAN: I didn't receive it in Mineola until a quarter of six.

MR. KAPLAN: May I say in response to that that the memorandum was ready at noon but we have typing problems in the United States Attorney's office. I won't submit a memorandum with typing errors and mis-cites to the Court. He had all weekend to research the matter, anyway.

MR. MEISELMAN: Thank you.

I want to make some comments, your Honor, which I think should be made. I would hope that I am not imposing upon the Court's time.

THE COURT: No. You take your time.

MR. MEISELMAN: The brief which has been submitted by the Government starting with page 3 sets forth alleged or proposed -- I should say, alleged facts. Those facts are nowhere in the record.

The reason I call the Court's attention to it is because I think our position is analogous to a motion to dismiss the complaint because it does not state a cause of action. If such a motion is made, the only facts which the Court should take into consideration are, for the sake of the motion, those facts which are alleged in the indictment could be taken as true for the purpose of argument but on a motion addressed to a pleading as a matter of law, extraneous facts are not in issue, if they were, this would become

a motion to the effect of a motion for summary judgment which it is not.

A question is raised in the brief at page 4, as long as Mr. McGrath was perceived to be a government official, it doesn't matter what office he held.

Well, let's, if we can, remove that to the ridiculous extreme. First, there is no evidence in the record that prior to September 1, 1972, he was a government official. And secondly, assume that he were a chicken inspector for the United States Department of Agriculture, and as a chicken inspector, having no power, nothing whatsoever to do with the Park Commission or whatever it may be called, that he did and was perceived by people to have that power. It would not be a crime under the Hobbes act. At best, what it would be, would be an extortion or a larceny under false pretenses, under the common law definition of larceny as set forth in the penal code in the State of New York.

I think the Court is well aware that the larceny set forth in the Hobbes Act was copied from the penal law of the State of New York.

Now, at page 5, Mr. Kaplan, I quote him, says, "No compelling reason is proferred why defendant failed to request from the Government a bill of particulars on this issue."

As a matter of fact, in our pre-trial motion for a bill of particulars before this Court, we set forth items 6c and 6d. They read as follows:

"C, the manner in which it will be claimed that each named tow-truck operator was subject to the authority, direction, supervision, and control of the governmental authority alleged in the indictment;" and D:

"State the manner in which it will be claimed that the defendant had the power to adversely affect the towing business of each of the tow-truck operators involved."

By the Government's letter of June 2, 1976, the Government stated in response:

"Opposed, the matters requested are evidentiary in nature."

I cannot see how Mr. Kaplan states that we had to give a reason why we didn't ask for a demand in our bill of particulars when we did.

At page 9, Mr. Kaplan says that the words, "Long Island State Park and Recreation Commission," in the indictment, are, "clearly surplusage." I think the test of what clearly surplusage means is, with due respect, that if this word completely taken out of the indictment, would the indictment still stand? That

is what clear surplusage is.

I think in this case if those words were taken out there would not be a valid indictment.

Indeed, the entire indictment -- I'm sorry, the entirety of the five counts involved are so stated by the Government that the words, Long Island State Park Commission and Park Maintenance Supervisor are completely interwoven because after reciting that Mr. McGrath was the Parks Maintenance Supervisor of Long Island State Park, each count says that as such he did the following, and as such, referring to his capacity as Parks Maintenance Supervisor of Parks and Recreation.

Mr. Kaplan, of course, assumes that Mr. McGrath was a government employee. I do not make any representation to the Court whether or not he was or was not. But I do state there is nothing in the record which shows -- that is the only thing that is important now -- that he was or was not.

Now, the brief of the Government took several positions. In reply, I think I found on Saturday -- I felt rather strange because after a few minutes I found I was surrounded by law students, each one of whom took a look at the color of my hair and the way it is combed and started asking me, "How do I found this and that."

Although I was gratified by their attention, I was also somewhat put down by the fact that I must at least have a father image of some sort.

THE COURT: Very interesting.

MR. MEISELMAN: In the case of Downum aganst the United States 372 US 734, decided by the Supreme Court of the United States in 1963, the jury had been selected and sworn and the prosecution then found that one of the witnesses was not available and refused to proceed without that witness.

On a motion to dismiss for lack of prosecution, by the defendant, the indictment was dismissed.

The Supreme Court upheld the trial Court in such a dismissal upon the authority of Cornero against the United States at 371 US 811, because the question arose as to whether the defendant could be retried and whether jeopardy had attached.

Downum stands for the proposition that when the jury is sworn the trial has begun and jeopardy attached. In the Instan case we already addressed the jury.

Citing Cornero, I quote from the Cornero case what the Court said, the Supreme Court:

"The situation present is a simple one where the district attorney entered upon the trial of the case without sufficient evidence to convict --" this is

referring to the facts in Cornero -- "This does not take the case out of the rule with reference to former jeopardy. There is no difference in principle between a discovery by the district attorney immediately after the jury was impanelled that his evidence was insufficient and discovery after he had called some or all of his witnesses."

In the Downum case they also cite United States against Watson, 28 Federal Cases 499, and I read from page 500, 501:

"The mere illness of a district attorney or the mere absence of witnesses for the prosecution is no ground upon which in the exercise of sound discretion a Court can on the trial of an indictment properly discharge a jury without the consent of the defendant after the jury has been sworn and the trial has thus commenced. To admit the propriety of this exercise of this discretion on such grounds would be to throw open the door for this indulgence of caprice by the Court to possible and probable threat of the defendant. When the trial of an indictment has been commenced by the swearing of a jury, the defendant is in their charge and is entitled to a verdict of acquittal on the case on the part of the prosecution if for any reason has not made out against him unless he consents to the discharging of

the jury without giving a verdict.

Now, the Government has cited in its brief some cases, and without appearing immodest, none of them stand for the propositions or principles enunciated.

For instance, United States against Cirami, 510 Fed Second 69, does not stand for the proposition set forth in the brief. It stands for the proposition that only mere surplusage may be deleted only if the jury has not seen or been read the entire document. To the same effect, Somerville against Illinois.

The one case which bothered me was the last case cited by the Government on the last page of the brief, I think page 11, in which they cite United States against Cahn.

THE COURT: That was tried in this Court.

MR. MEISELMAN: Yes, docket number 75 Criminal 645. Here we have to go into a new item. They cite that proposition for the fact that the Government can amend by grand jury action an indictment during trial.

THE COURT: That is what happened in that case.

MR. MEISELMAN: Well, your Honor, I spoke with Mr. Irwin Klein, who tried that matter, at 6:30 on Friday. He said that there was no amended -- that there was a superceding indictment. I was at the Clerk's office this morning at 9 o'clock. It's true.

that a good part of the record is no longer in the Clerk's office, it is now in the Court of Appeals on appeal. However, I studied the minutes in the docket and I must confess I tried to study it as carefully as I could. Those minutes are available to this Court.

I took out interesting data from the very docket. Indictment number 75 CR 645 had its trial begun on February 9, 1976.

On February 25, 1976, both sides rested.

On February 27th, on a jury disagreement, there was a mistrial and the jury was discharged.

On March 19, 1976, under docket number 75 CR 645S, a superceding indictment was filed.

On that superceding indictment a trial commenced on May 3, 1976, and was terminated on May 21, 1976.

I have not had the benefit of reading the record, any of the transcripts or anything else. I might say that I developed a bit of a migraine headache on Saturday trying to find authority, anyplace, for a grand jury amending an indictment in the middle of trial.

There is, I found, unless I missed it someplace, no such authority.

As a matter of fact, I find no authority for a grand jury amending an indictment. I find authority for the issuance of a superceding indictment, but not

for the amending of an indictment.

Now, under the Sixth Amendment to the Constitution, a defendant is entitled to be advised of the nature and cause of the charges against him at all stages of the proceeding.

We start the trial with one set of rules and now the Government in the middle of trial wants to make a different set of rules. We are severely prejudiced. We state to the Court if that indictment had read differently, my opening statement to the jury would have been different. And I state, your Honor, that I would have prepared this case differently. This is ample prejudice.

I cannot see how the Government can be allowed to do what it is attempting to do. If they would do it now, they could at any time, if we just continue this absurdity further, they could at any time during the trial move to amend by having a grand jury act after they have the benefit of seeing how the trial is proceeding.

This, your Honor, I believe is unfair. I believe it is improper, and I believe it is unconstitutional and highly prejudicial to the defendant.

THE COURT: Mr. Kaplan, I will hear you.

Are you finished?

MR. MEISELMAN: Yes, sir.

MR. KAPLAN: Your Honor, before I commence my argument, I would just like to point the attention to the Court regarding the amended situation in the so-called Cahn case. There were two trials. Irwin Klein participated in the first trial before Judge Dooling. The second trial he was not present. In that trial, Mr. Cahn tried it himself and there was a superceding indictment. That was in fact an amendment declared by the grand jury during the course of the trial which the Court acted upon and in one sense or another when he charged the jury sent it to the jury in an amended form although did not specifically advise the jury there was an amendment to the indictment.

It was like the case at bar somewhat, certain words, three or four, were incorrectly used. I think it was the National District Attorney's Association.

Addressing myself specifically to the facts of this case, your Honor, it is said that the Government is somewhat limited to a certain state of facts as proposed by the defendant -- we would say at this juncture of the case that the facts have yet to be determined. Those are determined during the course of the trial.

I will state at this point, your Honor, we did have a witness in the grand jury, Mr. Delaney of the Long Island State Park Commission and he was aware of all the facts and circumstances regarding the change of the commission. He has stated --

(continued next page)

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MR. MEISELMAN: Your Honor, I will object to what Mr. Delaney may have stated to the Grand Jury, unless I have a copy of those Grand Jury minutes because I don't think he should paraphrase a witness' testimony before a Grand Jury after a trial has commenced, that has been frowned upon and attorneys have been censured as to using --

THE COURT: If you are going to quote from what the Grand Jury minutes state, you should furnish Mr. Meiselman a copy thereof, of what you intend to quote.

MR. KAPLAN: I have no objection to that.

THE COURT: That is up to you.

MR. KAPLAN: I don't have the minutes at the time, they are being typed.

This is all argument --

THE COURT: Unless you do have a copy then you cannot quote.

If you had the minutes maybe --

(At this point Mr. Kaplan was handed an envelope.)

MR. KAPLAN: Here are the minutes, Your Honor.

Your Honor, we have one copy.

I ask that they be marked and be presented

to you in camera.

THE COURT: Don't bother to bring it up in that fashion. I mean if you are going to quote from something then you provide Mr. Meisalman with a copy of what you are quoting from, or don't bother to do it.

MR. KAPLAN: We only have one copy, Your Honor.

THE COURT: What am I supposed to do about that?

MR. KAPLAN: I have no objection to having him see it.

THE COURT: Do you want me to mimeograph it or xerox it or something?

If you are going to do that, let him see what you are quoting.

MR. KAPLAN: I want to have them marked.

THE COURT: If you can't do it that way, don't bother to do it.

MR. KAPLAN: May we have them marked.

THE COURT: Any way you wish as long as he sees what you are quoting from.

MR. KAPLAN: Now, as Mr. Delaney testified in the Grand Jury on Friday, the so-called re-organization --

MR. MEISELMAN: May we have him quote from minutes?

MR. KAPLAN: I was present at the Grand Jury, I am just stating, Your Honor, this in my oral argument.

I don't know why he keeps interrupting.

MR. MEISELMAN: These are not facts which were drawn before the indictment.

THE COURT: He isn't aware of what is in there, maybe if he had been furnished with a copy and he can read it over then your paraphrasing would have meaning to him. But under these circumstances he isn't aware and you will have to quote Delaney.

MR. KAPLAN: Your Honor, I would offer the Grand Jury minutes of October 15, 1976.

THE CLERK: So marked as 3500--7.

MR. KAPLAN: Your Honor, I will quote from the relevant portion of the minutes.

MR. MEISELMAN: May I look on with you?

THE COURT: Surely, you can look on while he is doing that.

MR. KAPLAN: At page four:

"What was the name" --

"Question: What was the name of the entity that had jurisdiction and control of the

park at Jones Beach and other parks, State parks in Long Island in the late 1960's, early 1970's.

"Answer: It was the Long Island State Park Commission which was a division of Parks within the Conservation Department.

"Question: Did there come a time that a reorganization was effected in the State with respect to parks?

"Answer: Yes, in 1970, they created the office of Parks and Recreation within the Executive Department of the State of New York."

Your Honor, I'm going to object to Mr. Meiselman --

MR. MEISELMAN: No, no, please.

MR. KAPLAN: And Mr. Meiselman nodding and turning around, Iam making argument --

THE COURT: There is nobody here but Mr. Meiselman and you and myself in connection with this situation.

Don't object, let him, if he wants to look or stand over there, let him, if he wants to nod, let him nod. I am not paying any attention to it, I am listening to you.

MR. KAPLAN: Thank you, Your Honor.

"Answer: (Continuing) In 1970, they created

the office of Parks and Recreation within the Executive Department of the State of New York. At that point in time, the division of Parks was abolished.

"Question: Was there any effect as far as the Babylon Office was concerned at that time, as far as their duties and functions?"

MR. MEISELMAN: Objection, Your Honor.

This witness has not been qualified and the statute in the Public Authority Law, the Conservation Law and the Executive Law speak for themselves more than this witness can.

The law speaks for itself.

He is attempting to characterize what the law has said.

THE COURT: Well, actually he is presenting a witness --

MR. KAPLAN: Yes, this is a witness.

THE COURT: This was a presentment before the Grand Jury and at this time an objection would have no affect becauseif it is true, it is true, if it is not true, then it may have been improperly presented. But that is not before us.

Now go ahead.

MR. KAPLAN: This is theevidence the Govern-

ment intends to present at trial.

THE COURT: That is right.

MR. KAPLAN: "Functions and duties" -- this is the answer of Mr. Delaney:

"Functions and duties were transferred in total to the Office of Parks and Recreation.

"Question: So this was a formal and technical change that was effective at that time?

"Answer: Yes.

"Question: Can you tell us what section s of the law were involved in that reorganization?

"Answer: The 1970 reorganization would have been Article 25, as I recall, of the Executive Law.

"Question: Now, did that affect employees, the administrators and the organizations in any way in the Babylon Office?

"Answer: Employees of the affective agency, which would have been the Long Island State Park Commission, were transferred into the new agency just as this in status; it is the easiest way to describe it.

"Question: How about administrators as far as the Park Maintenance Supervisors?

"Answer: Same.

"Question: Did there come a time when a name

change was effective?

"Answer: I believe it was in 1972, in September, that the Long Island State Park Commission became the Long Island State Park and Recreation Commission.

"Question: What was the reason for the name change?

"Answer: Actually the name was changed so that people would realize that parks were not just a piece of green for people to go to, but there would also be recreation facilities within the green areas.

"Question: So, in other words, there was no effect as far as the functions, duties, obligations and powers of the Long Island State Park and Recreation Commission as indicated by the name change and using the word Recreation.

"Answer: There would be no change as far as any employee within the Park Region would be concerned, except for one person.

"Question: Who was that?

"Answer. The general manager under this organization, instead of reporting to the Chairman of the Board of the Long Island State Park and Recreation Commission, he reported to the Commission of the Office of Parks and Recreation.

"Question: Did it affect his duties and

powers in any regard on a day-to-day basis?

"Answer: He actually just changed bosses.

"Question: As far as the Park Maintenance Supervisor his title or position was concerned.

"Answer: Even under the general manager he continued basically as he was.

"Question: Were there any technical changes in Babylon affected by this?

"Answer: No.

"Question: Were any job functions changed?

"Answer: None.

"Question: And the Park Maintenance Supervisor maintained the same position throughout?

"Answer: Absolutely.

"Question: Was it merely a cosmetic change of name with no real affect on the Babylon Office other than the fact that the superintendent or the general manager, as you stated, would report to a different boss?

"Answer: That would be the only change."

THE COURT: Now, when was the testimony taken?

MR. KAPLAN: On Friday.

THE COURT: On Friday?

This is the basis for the amendment which you got?

MR. KAPLAN: Well, Your Honor, I am just advising the Court of the facts as they pertain to Mr. Meiselman's argument. 82a

THE COURT: Those are the facts on which you base your amendment?

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MR. KAPLAN: What I am saying to the Court at this time, Your Honor, is --

THE COURT: Address yourself to the motion because we haven't gottten to the amendment yet.

MR. KAPLAN: I am also advising the Court of these facts for another purpose, and that is that the change, the so-called change from Long Island State Park Commission to the Long Island State Parks and Recreation Commission was a cosmetic one, as Mr. Delaney stated there was no affect on the Babylon Office; it was just a change-over in a very formal sense into a different segment of the State System.

THE COURT: Mr. Meiselman doesn't agree with that, the Commission had responsibilities and duties additionally, and one was condemnation which wasn't brought over into the Parks and Recreation Commission, and that responsibility went to Albany, so there were basic changes.

MR. KAPLAN: But none that affected the Babylon Office, none specifically that affected the Park Maintenance Supervisors.

Your Honor, these are facts in dispute and should be presented in a trial, and we would state after being presented then Your Honor may rule on,

Your Honor hasn't heard all the facts.

THE COURT: What further do you have?

MR. KAPLAN: Your Honor, under Rule Number 12(b), we argue to the Court that to --

THE COURT: This is really the crux of Mr. Meiselman's position before the Court.

MR. KAPLAN: 12(b)?

THE COURT: Yes, sir.

MR. KAPLAN: We take the position, Your Honor, and we believe it is supported by authority, that this motion that was made after the jury was impanelled and after the opening statements was not a timely one, and as Your Honor knows, under 12(b) such a motion if not jurisdictional in nature has to be made before trial commences or must be dismissed.

We are saying it is not jurisdictional.

Mr. Meiselman calls it jurisdictional, but he offers no authority to indicate to the Court that it is jurisdictional.

First of all we are talking about the Hobbs Act, the Section under "Fear of Economic Loss."

Now one of the theories which the Government and one of the facts which the Government will produce during the course of the trial is that there was

fear of economic loss relative to the towing operators.

Now, there is of course no need for Mr. McGrath to be a public official or to be associated with the Park Commission. He can be a man on the street extorting monies from the towing officers. The fact that he is a member of the Parks Commission is irrelevant and has nothing to do with the indictment. The only way that came into play was that it was under color of official right.

Your Honor, the cases are legion in stating that for there to be extortion under official right the position of the public official can be defacto and not dejure. In other words, he doesn't have to be acting in his official capacity, United States of America vs. Mazzei, which was a case of a Pennsylvania State Senator, and this is a case which is often cited in the cases, and this was a Third Circuit case, and an additional case which was tried in this Court is United States of America vs. Cristenfeld, who was a man who was acting as party chairman and although he had some other official powers the question was was he acting under his power as a public official or as a party official, and Judge Judd sustained the Government's position under the

Mazzei case.

Now in the case of United States against Trotter, which emanated from this Court, this was a Second Circuit case and it is instructed in that Trotter says that alleging a color of official right in and of itself is sufficient. We don't have to say that he was the Park Maintenance Supervisor if in fact he is perceived as having some coverable authority and some official duties, and if in fact the proof is that he has some official duties, then the indictment is sufficient perse.

Your Honor, I say that the inclusion of the word "Long Island State Park Commission," or "Parks and Recreation Commission," or "Park Maintenance Supervisor", are merely surplusage.

Your Honor, there are two elements of the offense, one is under color of official right and the other using fear of economic loss and here the color of official right is the element of the offense.

We are saying further that jurisdictionally the motion by the defendant is defective in addition and we are saying that the difference between the Long Island State Park Commission on one hand and the Long Island State Parks and Recreation Commission

on the other hand is at most an immaterial variance. There are a number of cases which I will cite in support of that, and I think one of them is what was cited in the Government's memorandum, United States of America vs. D'Anna, which says, to quote that Second Circuit case, Your Honor:

"Whether a variance between the indictment can be proof is fatal to the prosecution will depend on determining whether these 'sustantial rights' of the accused have been adversely affected.'"

Your Honor, it can hardly be said that inclusion of the words, "and Recreation," creates such an adverse effect, and in fact, no abridgement of rights has been shown in connection with words, "The Long Island State Parks and Recreation Commission," as opposed to the "Long Island State Park Commission."

Your Honor, there are a number of other cases, United States of America vs. Somers, which is a Third Circuit case, 496F2nd 723, a 1974 case, and there it talks about a time variance and it is said that it is irrelevant that the Government chose one time in the indictment and the proof was as to another time.

Further, Your Honor, there are a number of

cases under Rule 7 that are cited in the Annotations in the United States Code, Your Honor and it is there said that where a variance is not an element of the offense and substantial rights are not affected then it will not cause a dismissal of any count in an indictment.

As we said, there is no prejudice that has been shown by the fact that it was the Long Island State Park Commission. Furthermore, they were put onnotice because Mr. McGrath was working for the Commission --

MR. MEISELMAN: I will object to that, there is no such evidence in the record.

MR. KAPLAN: Can I finish my statement?

MR. MEISELMAN: I think it is prejudicial to the defendant to make a gratuitous remark.

MR. KAPLAN: Your Honor, may I finish?

MR. MEISELMAN: I am sorry.

MR. KAPLAN: What I was trying to say is that Mr. McGrath was an official who worked under these two names and he was aware of the fact that there were two names, so he was on notice that there were two names, and there has been no prejudice that has been shown by the fact that one of thenames was used in the indictment. We are saying that the

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Long Island State Parks and Recreation Commission is merely a continuation. It would be as if one were to cite in the indictment the Coca-Cola Company as contrasted with the Coca-Cola Bottle Company, as being opposed to each other whereas one may be a subsidiary of the other.

Now it certainly put the defendant on notice of the change which he is involved in, just as an employee of the Coca-Cola Company might actually be an employee of the Coca-Cola Bottling Company.

Your Honor, it is irrelevant.

Your Honor, Mr. McGrath knew he was a member, a public official of the Long Island State Park Commission and whether the name was changed again is irrelevant and the variance is at most immaterial.

We would also state to the Court that this would involve the dismissal of five counts of an indictment, and as to each of those five counts if Your Honor will read them theyware subsequent to 1972 and the proof will come in to that effect and it is the right name, the Long Island State Parks and Recreation Commission which existed in those counts, in each of the counts and in every one of those counts, so that the indictment on its face is sufficient.

At most what Your Honor could say is that if there was prejudice then proof could be excluded as to prior to 1972 because it only relates to the Long Island State Park Commission and not to the Long Island State and Recreation Commission. There has been no showing anywhere that the indictment subsequent to the date 1972 is not sufficient on its face, in fact it is, because the Long Island State Park and Recreation Commission has written in the indictment was in existence for 1972 and for 1973.

Finally, Your Honor, we would say that since the indictment has been amended as to this regard by the Grand Jury on Friday, the defendant can show no prejudice.

He says there is no authority for such an amendment but in Ex Parte Bain and Styron, in those cases, and cited wrongly by the defendant, he uses those cases for the proposition that the Court cannot amend an indictment, obviously, at any time, but in those same cases, that is in Ex Parte Bain and Styron, they state unequivocally that the only way which an indictment can be changed is by re-submission to a Grand Jury.

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MR. KAPLAN: (continuing) In fact, in United States versus Cirami, Judge Costantino had excised some portions of the indictment and submitted it to the jury, and this was during the course of the trial. The Second Circuit in that case said:

"Ever since the Supreme Court announced in ex parte Bain that an indictment cannot be amended except by resubmission to a Grand Jury, the law has been in a "confused state as to whether any alteration is permissible and if so, how any appropriate changes may properly be made."

This was talking about an amendment by the Court on the Government's motion.

We suggest that since the only way to do it is by resubmission to the Grand Jury, and that is the only way the Government could have done it, by resubmitting it to the Grand Jury, and we have the Grand Jury vote on it.

We are not saying that if these were issues that the Grand Jury voted on which were elements of the offense or were perhaps areas that put the defendant to a greater burden of proof or of fact, and that he was not on notice, we would say prejudice might very well attach in that situation, but no prejudice is attached in this situation.

As far as the Cahn case, it was done in the Cahn, case, and Judge Judd then spoke to the jury about it.

Your Honor, there is absolutely no authority that the Government cannot resubmit an indictment to a Grand Jury. The Grand Jury has voted on this amendment properly and we would urge on the Court under all the grounds that the defendant's motion be dismissed accordingly.

THE COURT: All right.

Mr. Meiselman, anything further?

MR. MEISELMAN: Your Honor, Mr. Kaplan states that there was no need for Mr. McGrath to be a public official, he could be a man on the street. The mere fact that this case is before this Court and not before a State Court requires that he have been a public official and requires that he extorted money under color of right and that there was interference with Interstate Commerce. If none of those elements or any one of those elements are not present, it is not a Hobbs Act violation. If he were a man on the street this case would not be before this Court.

Now the case of the United States of America against Trotter has been cited by Mr. Kaplan for the proposition that you need not show he was an officer.

Well, with all due respect to Mr. Kaplan, that is not what Trotter stands for at all. In Trotter the indictment alleged that the defendant was I believe supervisor of town highways or something similar to that. A motion was made to dismiss by the defendant in that case on the ground that the indictment failed to state in what manner he had misued his office, and the Court said that the mannerneed not be stated, but it certainly upheld the fact that the office had to be stated because that [illegible] the gravamen of the indictment itself.

Now in Bain and Stirone, which I cited, the Court said that the only way an indictment can be amended is by resubmission to a Grand Jury. I don't quarrel with the Supreme Court of the United States in making that statement, but in Bain and in Stirone they didn't say you make such resubmission after the trial stops. If Mr. Kaplan had resubmitted this matter to the Grand Jury before the trial of this action, I would have no cause for complaint. I cannot stop a superseding indictment in any way,but not after the trial has commenced.

That is my argument, your Honor.

THE COURT: All right.

MR. KAPLAN: One further point, your Honor,

before I rest:

Mr. Meiselman, apparently, misconstrues the Hobbs Act, 18 United States Code 1951. It is in the disjunctive, and every case that interprets the Hobbs Act says that, and I will read from the section:

"Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this Section shall be fined."

It is in the disjunctive.

MR. MEISELMAN: That was not the section that we were indicted under, we were indicted under color of official right.

MR. KAPLAN: Can I finish?

MR. MEISELMAN: That is not what we were indicted under.

MR. KAPLAN: Every case construing the sections, and I will cite them, D'Anna, Mazzei, Tropiarno, every case construing the Hobbs Act says color of official right and fear of economic loss, and they are two separate and distinct theories. In other words in submitting this to the jury the jury can find either

fear of economic loss or color of official right. If we fail under color of official right, the jury nevertheless can bring in a verdict under fear of economic loss.

Your Honor,the indictment is sufficient because on either theory it can go to the jury. Under color of official right we need not show any fear was induced.

Your Honor, I think we have shown the point and this indictment is sufficient.

MR. MEISELMAN: I think that there has been a complete confusion here between two completely and distinct elements of the crime, one is under color of official right. Now, if under color of official right there is interference with Interstate Commerce, a deprivation due to economic loss, then that is fine, but they are two elements.

Does Mr. Kaplan wish this Court to now believe that what we have been indicted under has nothing to do with an act under color of official right?

MR. KAPLAN: It is a separate element of the offense.

MR. MEISELMAN: Of course they are separate elements, we are talking about color of official right.

MR. KAPLAN: As one of the elements of the

offense.

MR. MEISELMAN: As one of the elements which we are arguing about.

MR. KAPLAN: There is also fear of economic loss.

They are two separate and distinct sections.

MR. MEISELMAN: And also receipt of money, and we are not quarreling with money, we are not quarreling with economic loss, that is going to be a part of the indictment or the trial --

MR. KAPLAN: Excuse me --

MR. MEISELMAN: Go ahead.

MR. KAPLAN: They are not mutually exclusive, fear of economic loss and color of official right, they are two theories.

THE COURT: The Court will pass on that position at the proper time, I don't think I have to now because I think the important thing is the defendant's motion which is before the Court to dismiss Counts 11 through 15, and that is what is before the Court.

Anything further as to that, Mr. Meiselman?

MR. MEISELMAN: No.

THE COURT: All right.

The Court has considered the motion and has gone over the papers which counsel have presented to

the Court.

Now the real basic rule which governs and which covers this particular application by the defendant is Rule 12(b)(2), which provides in part that defenses and objections based on a defect in the institution of the prosecution or the indictment may be raised only by motion before trial.

It is a question as to whether or not the issue which was raised by the defendant is jurisdictional in effect and it is the Court's position that it is not, and under the circumstances the Court agrees with the position taken by the Government.

It would appear that the defendant has waived his objection under Rule 12(b) of the Federal Rules of Criminal Procedure, he has failed to set forth a jurisdictional defect in the indictment, he has failed to set forth a material variance and has not shown actual or possible prejudice.

The Government has amended the instant indictment by presentation to the Grand Jury on October 15, 1976, and the Court's position is that the action was proper.

The motion to dismiss is denied.

MR. MEISELMAN: I respectfully except, your Honor.

THE COURT: Thank you.

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MR. MEISELMAN: Am I to understand that the Court is accepting the presentment or the alleged or proposed amendment?

THE COURT: Yes, the Court is, under the circumstances.

MR. MEISELMAN: I respectfully except to that, too. There is no evidence before the Court that such an indictment was properly made or such a proposed amendment was properly made and the attempt to amend an indictment during the course of a trial is highly improper, unfair, prejudicial and unconstitutional in violation of the Sixth Amendment of the Constitution at least. I certainly could have taken other steps with respect to the defense of this action. My opening would have been different, as well as my preparation had I known about it.

THE COURT: This could well be.

Mr. Kaplan, do you wish to address yourself to what Mr. Meiselman said?

MR. KAPLAN: If he objects based on the fact he was prejudiced, I think he should state the prejudice specifically.

THE COURT: He told you that his opening might have been different, and his whole approach to this case could possibly have been different.

MR. KAPLAN: We take the position that your Honor do what Judge Judd did -- not advise the jury there is an amendment, but send it to the jury in your Honor's charge.

THE COURT: That's the approach I would have to take under the circumstances.

It's on the record, Mr. Meiselman, and we'll proceed. I think we'll take a few minutes. I may look at something else.

(Recess taken.)

(After recess.)

MR. MEISELMAN: Your Honor, before the jury comes in --

THE COURT: Wait until Mr. Kaplan comes in.

(Pause.)

THE COURT: Yes sir, Mr. Meiselman.

MR. MEISELMAN: As your Honor is well aware, we differ on this motion we just concluded.

THE COURT: Yes.

MR. MEISELMAN: I don't wish to waive any of my rights during the trial with respect to it. On the other hand, I don't wish to interrupt the trial by making objections obviously on which your Honor's ruling will be adverse because of your Honor's ruling on the motion.

May it be deemed that I have a standing objection and continuing one with respect to it -- with respect to statements of the Long Island State Park Commission --

THE COURT: And with respect to the amendment to the indictment which is now before the Court. The understanding is he has a continuing objection to that and he stated for the record what his position is. He considers it improper and illegal and the Court has no quarrel with that position.

You have a continuing objection and it will not be necessary for you to interrupt or object during the trial and this objection continues throughout the trial until its conclusion, and that's the defendant's position and the Court is aware of this and the Governmnet is aware of this.

MR. MEISELMAN: Thank you, sir.

MR. KAPLAN: I have no problem with that.

I don't know if Mr. McElroy was going to sit in during the course of the trial. Now he's not present.

THE COURT: If he comes in and wants to sit down, let him sit down. The Government has done it on many cases and a case agent sits and comes back and forth. Mr.Teitler is here with you.

MR. KAPLAN: Correct.

THE COURT: He's not there now.

MR. KAPLAN: His father took ill last night.

THE COURT: I don't care about the reason. What if this man's father took ill?

MR. KAPLAN: If he's going to be a witness.

THE COURT: No, under these circumstances I will permit it. It's the same as a case agent.

I don't think there's a problem. I'll permit it. Whatever the facts may be in connection with this situation, they're fairly evident and I feel the jury will get the facts and the fact that Mr. McElroy may be here, I don't think that's going to alter or prejudice the Government under these circumstances.

MR. KAPLAN: I did some research and it specifically violates a specific canon of ethics.

THE COURT: When we get to that point, that I feel that way, I'll let you know about it. That may be your position, but I don't know where or how it may or should at this point -- is he an employee of one of the commissions?

MR. MEISELMAN: No.

MR. KAPLAN: Only if he becomes a witness.

MR. MEISELMAN: Your Honor, Mr. McElroy is an attorney, one time associated with the firm of

Cunigill, Killian, Johnson and Shea. He's now affiliated with the firm of Shea & McElroy and was consulted by me as a tax expert and an attorney and he sits at counsel table in that capacity. He may have also advised Mr. McGrath but as an attorney, your Honor.

THE COURT: Nothing wrong with that. You see any violations of anything --

MR. KAPLAN: I do, but I won't press it. He's not here and it's not come to pass -- only if he becomes a witness.

THE COURT: I'm permitting him to come in and sit at counsel table. I'm permitting that to be done.

MR. KAPLAN: I understand. Only if he becomes a witness would there conceivably be a trouble in terms of the canon of ethics.

THE COURT: That will be your problem. If there's anything wrong, you take it as something that you should attend to because unless and until the Court sees something of a serious nature which the Court feels is a violation of the canon of ethics, I don't intend to do anything to alter what's before the Court at this time. I see no problem at this time and even if he becomes a witness, I don't see there's going to be a serious problem. I think he can testify.

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I don't see why not. That's the Court's position.

MR. KAPLAN: Thank you, your Honor.

THE COURT: Thank you.

Ready to proceed?

MR. KAPLAN: Government is ready, your Honor.

THE COURT: All right, Bring out the jury.

(Jury is seated in the jury box.)

THE COURT: Good morning, ladies and gentlemen.

The reason you were late in getting into the Court is because there was a legal issue which the Court had to address itself to concerning this case and while counsel and the Court were involved in the arguments and the discussions concerning this particular issue -- and it was a legal issue and therefore the jury wasn't involved -- we'll go forward as quickly as we can. We now start the Government's case.

Mr. Kaplan, you may proceed.

MR. KAPLAN: Thank you, Your Honor.

The Government calls Charles Ancona.

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* * *

THE COURT: What is the date of the indictment?

MR. KAPLAN: December 10, 1975, filed in the Clerk's Office.

THE COURT: All right.

Q After December 10, 1975, did there come a time when you have a conference with the United States attorney's office?

A After the indictment?

Q Yes sir.

A After I was indicted I came to court for trial.

Q Let me put it this way, I am now talking about any conference in which the subject matter was discussed as to in what manner that indictment could be dismissed.

A Yes, that was towards 1975, end of 1975 or beginning of 1976.

Q During that conference, there were discussions were there not, at which you were present concerning the condition for the dismissal of the perjury indictment?

A Yes sir.

Q There were discussions, were there not, about no prosecution for you with respect to failure to file income tax returns, filing fraudulent returns, evading taxes, and so forth?

A No sir, that wasn't promised me.

Q Was it discussed?

A I don't recall that.

Q All right.

But the conditions for the dismissal of the indictment were discussed, right?

A Yes.

Q How many such conferences were there?

A The conditions under --

Q Under which your indictment might be dismissed?

A I believe one.

Q Only one.

If, did there come a time -- by the way, during this conference did you see anybody make any notes?

A I don't recollect that.

Q Do you know if any notes were made?

A I dont remember that either.

Q Did there come a point in any of those conferences or conference in which it was said in words or substance that your testimony was not enough, that you had to get other people to corroborate you?

A Yes sir, that is what I was told.

Q Did you agree to do so?

A I agreed to do what I could do.

Q Then you went out and spoke to other people

about getting them to testify to back you up?

A My attorney did that.

Q Who did he speak to, Mr. LaGuardia, if you know?

MR. KAPLAN: I object as to what his attorney did.

MR. MEISELMAN: If he knows.

MR. KAPLAN: I object to --

MR. MEISELMAN: I beg your pardon --

THE COURT: I will sustain the objection.

Q Do you know if your attorney spoke to a Mr. Ancona?

A Yes.

Q Do you know if your attorney spoke to a Mr. Signorelli?

MR. KAPLAN: I object to what his attorney did.

THE COURT: He doesn't know the substance of what was said, he knows if they were spoken to.

Q Did he speak to Mr. Signorelli?

A Yes.

Q Mr. Gullo?

A I don't believe so.

THE COURT: Mr. Gullo is an attorney?

* * *

They are not to have any deliberations at this time.

MR. MEISELMAN: Your Honor --

THE COURT: We can't conduct business while they are looking.

MR. MEISELMAN: May we have a side bar?

THE COURT: You can have a side bar,come up.

(The following occurred at side bar without the hearing of the jury.)

MR. MEISELMAN: I would ask your Honor before the next witness testifies that we have an in camera hearing --

MR. KAPLAN: An in camera hearing?

MR. MEISELMAN: Or a hearing outside of the presence of the jury with respect to the name that is used in the indictment. Your Honor, it is my information that there was never any such name in existence.

THE COURT: Which name?

MR. MEISELMAN: Russo Brothers Services Station, Russo Brothers --

MR. KAPLAN: What does that have to do with anything.

THE COURT: You say there was never such a concern in existence?

MR. MEISELMAN: That name was never in existence

as a corporation.

THE COURT: Yes, Mr. Kaplan?

MR. KAPLAN: I don't know what he is talking about. If it is known by another name, so it is.

THE COURT: You mean that on a sign in front of the business --

MR. MEISELMAN: I never visited the business, but --

THE COURT: What?

MR. MEISELMAN: I never visited the business but I have had a search conducted by the Title Guaranty and Trust Company of all the records in Suffolk County and Nassau County, and there is no such corporation as the Russo Brothers Service Station.

MR. KAPLAN: What does that mean?

MR. MEISELMAN: The victim is the Russo Brothers Service Station, Inc.

THE COURT: Suppose the name was on the sign at the place of business?

MR. MEISELMAN: It is the indictment that counts.

THE COURT: I don't know that it is so.

MR. KAPLAN: If anything it is an immaterial variation.

MR. MEISELMAN: This is a victim.

MR. KAPLAN: It doesn't make any difference --

MR. MEISELMAN: Let me finish.

This is the victim and that means they are going to have to amend the indictment.

THE COURT: What I will do is the jury is going to go out when they are finished and before he is sworn before the jury you may question the witness as to the name and what bearing it may have and what was done.

Did they have a checking account or something?

MR. MEISELMAN: I have no idea.

MR. KAPLAN: This goes to the weight of the evidence, not --

THE COURT: I don't see any reason not to let it in, but if he wants it, I will let him.

MR. KAPLAN: Why an in camera hearing?

THE COURT: We will have a hearing, not an in camera hearing.

MR. KAPLAN: This is the third time he wants a hearing.

MR. MEISELMAN: Is he counting what I am doing, am I getting restricted todoing it three times?

MR. KAPLAN: That is what you do every time.

MR. MEISELMAN: Am I to be limited by him?

MR. TEITLER: May I ask Mr.Meiselman this, in his offer of proof he stated that the Title Guaranty and

Trust Company checked the name in Nassau County and Suffolk County, I want to know whether they checked it in Albany?

MR. MEISELMAN: As a matter of fact may I ask the Court to take judicial notice that each certificate of incorporation which is filed in Albany, that a copy thereof is sent to the County Clerk, to the Clerk of the County.

THE COURT: Yes, in which they do business.

MR. MEISELMAN: In which they do business.

THE COURT: That is correct.

MR. MEISELMAN: That is correct.

MR. TEITLER: That is not the point of my question.

THE COURT: Let us see, before we come back we will put the witness on the stand and we will see what he has to say concerning this.

MR. TEITLER: No matter what the offer of proof is, our position is clear that we deem this not to be a material variance.

THE COURT: I don't see that it is not admissible, I will take it.

MR. MEISELMAN: I think, your HOnor, it goes to the very crux ofthe case, you cannot change a victim's name in midstream.

MR. KAPLAN: Do you have a case?

MR. MEISELMAN: I am talking to the Judge.

THE COURT: Do you think this is an attempted change in a name here?

MR. MEISELMAN: No, they use the name in the indictment, which doesn't exist.

THE COURT: Well, we will see.

MR. KAPLAN: Where is the case?

MR. MEISELMAN: Do me a favor, Mr. Kaplan, you make cases.

MR. KAPLAN: Give us a case.

(The side bar conference was completed.)

(The jury continued examining the documents.)

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(The following took place in open court.)

(Pause while jury reviews exhibits.)

THE COURT: We will take a short adjournment. Please do not discuss the case. The jury may leave for a short adjournment.

(The jury left the courtroom.)

THE COURT: We'll take a short recess.

(Recess taken.)

THE COURT: All right, swear the witness.

MR. KAPLAN: Can we explain the hearing to the witness, your Honor?

THE COURT: I don't know that we have to. I don't see that we have to.

Swear the witness.

S A N T O R U S S O , residing at 19 Sarina, Comack, Long Island, New York, a witness called herein, was sworn by the Clerk of the Court and testified as follows:

MR. TEITLER: Since the defendant raised an issue claiming a jurisdictional problem here, I think it is appropriate for the Government to conduct the examination since we have the burden of establishing jurisdiction.

THE COURT: I suggest you do.

MR. MEISELMAN: May I ask, in view of the nature of the hearing before the Court that none of the questions to this witness be leading?

MR. TEITLER: This is a hearing and the rules of evidence will apply.

THE COURT: We will proceed.

DIRECT EXAMINATION

BY MR. TEITLER:

Q Mr. Russo, by whom are you employed?

A Russo Bros. Service Center, Inc.

Q Where is that service center located?

A 40-19 East Jericho Turnpike, East Northport, Long Island.

Q What type of organization is that?

A A corporation. New York State Corporation.

Q When was the corporation formed?

A I believe in 1961.

Q Would you be kind enough to tell the Court the location of the corporation?

A (No response.)

Q The physical location.

A The actual place of business?

Q Yes.

A 40-19 East Jericho Turnpike, East Northport,

New York.

Q For how many years has the corporation been in business?

A Since 1961. In business before, but not as a corporation.

Q Do you recall testifying before a federal grand jury in this case on January 7, 1976?

A I testified twice. I don't remember the date.

Q Let me show you Government's Exhibit 3500-19.

I ask you if that document refreshes your recollection?

MR. MEISELMAN: I am going to object to the refreshing of his recollection. The witness has -- the witness was asked by whom he was employed. He said Russo Bros. Service Station, Inc. He needs no refresher with respect to that.

MR. TEITLER: I asked the witness the date and gave him the document.

THE COURT: When he appeared before the grand jury?

MR. TEITLER: Yes.

MR. MEISELMAN: He testified by whom he was employed.

THE COURT: I will permit it.

Q Does that document refresh your recollection as to the date you testified before the United States Grand Jury for the Eastern District of New York?

A Yes.

Q Will you tell the Court what date it was?

A January 7, 1976.

Q Do you recall, sir, at that time, whether you told the grandjury exactly -- the exact name of your employer at that time?

A I don't remember.

Q I call your attention to page 1 of the grand jury minutes and I ask you to look thereon.

MR. MEISELMAN: I object to this entire line of questioning.

THE COURT: I will permit it.

MR. MEISELMAN: May I have a continuing objection?

THE COURT: Yes.

A Yes, I was asked these questions. It is in the record.

Q What was your answer to the question?

A What question was that?

Q By whom you were then employed?

A Russo B[illegible]s. Service Center, Inc.

Q Tell the Court the nature of the business that you were engaged in at the time of your testimony and throughout 1961 untilthe presen time?

A I am in the automobile repair and towing business.

Q Would you please describe to the Court what territorial jurisdiction, if any, you have over the Long Island State Parkway Commission?

A We have certain sections of the parkway system that are given to us through a franchise.

MR. MEISELMAN: The question was directed to what sections you have. Does that refer to Russo Bros. Service Center, Inc.?

MR. TEITLER: Yes, it does, your Honor.

A Yes.

THE COURT: The witness said yes.

Q Could you tell us the scope of time, the years when you had this exclusive jurisdiction?

A We started in business December 1956, until the present time we have a franchise on the parkway.

Q I direct your attention to the years 1968 through 1975 and I ask you who had the supervisory control over your operation?

MR. MEISELMAN: Objection, if your Honor pleases.

This has testimony that has nothing to do with the issue raised.

THE COURT: We will limit it as to the issue of the corporation's business.

MR. TEITLER: If your Honor will allow me a little bit of leeway, I will show the relevancy.

THE COURT: I will admit it then. Objection overruled. You may answer the question.

A What is the question?

MR. TEITLER: Would you read the question?

(Whereupon, the last question was read by the Reporter.)

A Mr. John McGrath from the Park Commission.

Q Did you testify to that fact before the Federal Grand Jury?

MR. MEISELMAN: Objection, if your Honor pleases.

THE COURT: He said he was going to connect it up. I will permit it.

A Yes.

MR. TEITLER: The Government has no further questions of the witness, your Honor.

THE COURT: Anything, Mr. Meiselman?

MR. MEISELMAN: May we have the witness excused?

THE COURT: Do you have any questions?

MR. MEISELMAN: No.

MR. TEITLER: In view of the fact defense counsel has no questions, we do have one further question.

THE COURT: All right.

DIRECT EXAMINATION

BY MR. TEITLER: (Cont.)

Q I direct your attention, sir, to the area of Eastport, New York where your corporation is located and was organized. Is there any other Russo Bros. Service Center or other organization of the type you own in that physical area?

A No.

MR. TEITLER: That concludes the Government's direct examination.

THE COURT: Thank you.

MR. MEISELMAN: In view of that, may I ask?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. MEISELMAN:

Q Mr. Russo, in your operation as a tower on the parkway, did there come a time when you had a contract, written contract, with anybody for that privilege?

THE COURT: We are not going into that.

MR. MEISELMAN: It's right on point if I may

connect it.

THE COURT: If it is on point, go ahead.

A From the time I started in business?

Q Yes.

A Yes, certainly.

Q You were subpoenaed to produce certain documents?

A By whom?

Q By me.

A Yes.

Q Have you produced those documents?

A I spoke to you on the phone and you told me you would call me and you never did.

Q Did you have a contract or do you have a contract either here or elsewhere, let's say for the period nineteen --

THE COURT: Why go into this?

Q With whom was the contract made?

A I don't remember.

Q He doesn't remember. The issue. The issue.

MR. MEISELMAN: I merely want to ask the witness, your Honor, the name of the party by whom he was employed that made the contract.

Q Was it with an oil company?

A Yes.

THE COURT: Which oil company?

THE WITNESS: We had three, originally I believe Sinclair, I believe the second one was American; and I believe the third one was Esso.

Q What was the name of your organization that made the contract with those oil companies?

A Well, it would have been changed. It depends on the year.

Q Irrespective --

THE COURT: He is telling you.

Q Irrespective, in any of those contracts, what was the name of the tower in those contracts that made the contract with the oil companies?

A You mean whether it was Russo Service Center --

Q Yes.

A I don't remember. It would have to go back to the years when incorporated.

Q No.

THE COURT: He told you.

Q How about '68 to '74, was it Russo Bros. Service Center?

A Couldn't have been. I wasn't incorporated. Russo Bros. before '61 --

Q '68 to '74, was the contract with the oil

companies with Russo Bros. Service Center, Inc.?

A I believe it was.

MR. MEISELMAN: I have no further questions.

THE COURT: You may step down.

Yes, sir?

MR. TEITLER: I believe the Government has made out the jurisdictional requirement.

THE COURT: It appears so.

MR. TEITLER: Mr. Meiselman may argue.

MR. MEISELMAN: I call your Honor's attention to the indictment which alleges that a victim of the alleged extortion was Russo Bros. Service Station, Inc. This witness testified unequivocally that he never did business under that name. His company is Russo Bros. Service Center, Inc. And the contract with the oil companies is Russo Bros. Service Center, Inc. which is a different organization as far as I know from the one set forth in the indictment.

I call your Honor's attention to ex parte Bain. I think the same issue was involved. I therefore ask your Honor for a dismissal of this indictment or this witness not be allowed to testify concerning any alleged extortion between John McGrath and Russo Bros. Service Station, Inc

THE COURT: Yes?

MR. TEITLER: The argument counsel is making seems to be identical to the argument made against the Long Island State Park Commission and the Long Island State Parkway Commission. Here the argument is a bit more frivolous. The witness testified before the grand jury as to the exact name of the corporation that he was involved in from the years in question in the indictment. Its entry, at most, what this indictment contains, is a typographical mistake or an inadvertence by the prosecutor in drafting the indictment. It can in no way be construed to have any jurisdictional defect in the indictment. If anything, it is a classic example of a mere name defect.

My proposition on that score is bolstered, the grand jury did have before it the actual information which should have been utilized in drafting the indictment.

Under Rule 12(b) as in the attack on the Long Island State Commission that this is a waiver, it has not been waived and it hardly can be construed to go to the jurisdiction of this Court.

Hence, it is a matter of pure technical defect

which should have been objected to thirteen months prior to trial. With respect to ex parte Bain, I need not belabor the Court with the faulty logic of counsel using that. Ex parte Bain, as espoused from the Supreme Court, was that a court could not amend a grand jury indictment. That was the holding of the case.

In order to save the Court time, I will dispense with any argument based on faulty logic of counsel.

THE COURT: Mr. Meiselman?

MR. MEISELMAN: I think I made my argument.

THE COURT: The application to dismiss is denied. The application is not timely and not in accordance with the requirement of Rule 12(b) of the Federal Rules of Criminal Procedure.

MR. MEISELMAN: If the application is denied on that basis, in view of the fact that this witness can testify only to Russo Bros. Service Center, Inc., I ask that he not be allowed to testify as to Russo --

MR. TEITLER: The same thing will happen at trial as happened now. We have a variance of the proof with respect to the allegation in the indictment. It certainly is not a material variance, there is no

prejudice alleged or substantiated by the defense in any way. And therefore the Government at the conclusion of the case or as a matter of law we will have proved an immaterial variance at the trial, certainly the existence of an immaterial variance before the proof actually came in which would not preclude the witness from testifying.

MR. MEISELMAN: The witness will be testifying to a non-existent corporation as far as I know. This is not immaterial. This is extremely prejudicial.

THE COURT: There is no proof of that before the Court.

MR. MEISELMAN: He has said in the hearing he is employed by Russo Bros. Service Center, Inc. That is the one he did business under. His contract was under Russo Bros. SErvice Center, Inc. There is no connection between Russo Bros. Service Station, Inc. as alleged in the indictment --

THE COURT: The application is denied. The Court doesn't feel this is a material variance and will permit the prosecutor to introduce the proof.

MR. TEITLER: Thank you.

MR. MEISELMAN: I submit it is with extreme prejudice to the defendant. We prepared our defense

to defend against Russo Bros. Service Station, Inc. We knew it was a nonexistent entity.

THE COURT: The Court doesn't feel the defendant will be prejudiced by this particular situation.

MR. MEISELMAN: We are being faced with an entity we were not informed about.

MR. TEITLER: Mr. Meiselman has claimed prejudice in the abstract throughout this trial. He has failed on every occasion to offer any substantial proof to bolster his argument. If he is telling the Court now he is completely surprised and prejudiced by the name of this organization, this argument is a frivolous argument and I submit it is being argued in bad faith.

MR. MEISELMAN: I don't know about good or bad faith. I don't wish to engage Mr. Teitler in such accusations. If the United States Attorney's Office is negligent in the way they prepare an indictment, and we prepare in accordance with the indictment that they presented, we are prejudiced.

THE COURT: The Court doesn't agree with that position that the United States Attorney has been negligent in the preparation here. The Court does not

agree with that.

MR. MEISELMAN: I am not saying that here --

THE COURT: The application is denied.

MR. TEITLER: Thank you.

MR. MEISELMAN: It is with prejudice to the defendant, your Honor.

THE COURT: Thank you.

Bring in the jury.

(The jury is in the jury box.)

THE COURT: Ladies and gentlemen, the Court had a short hearing while you were out. At this time we are going to adjourn for lunch. We will resume at 2:15.

Please do not discuss the case while you are away from the Court with anyone on or off the jury. The jury may leave for lunch.

(The jury left the courtroom.)

THE COURT: 2:15.

MR. KAPLAN: Thank you, your Honor.

(Luncheon recess.)

* * *

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(Jury present)

THE COURT: I might say to the jury that this trial is -- seems to be drawing out some, and it's -- it's taking longer than was anticipated, but I want you to be patient with us because the defendant as well as the Government is going to great expense in connection with this case and we will do our best to see that the trial moves along and you may, if you -- if you will be so kind, cooperate to see that, you know, you are with us and that we can complete this case.

As far as the individual who may have had a problem, it's against the law in any way to interfere with the members of the jury and this is being looked into. So any problem of this nature, please let the clerk know, and the Court will see that it's attended to.

All right. We will - we were going over some of the issues of the case during the time that you have been out and these are problems that the Court had to attend to with the attorneys, but we will proceed now.

You may proceed.

MR. KAPLAN: Thank you, Your Honor.

The Government calls Joseph Foley.

THE COURT: Come up, please.

J O S E P H F O L E Y , called as a witness having been first duly sworn by the Clerk of the Court testified as follows:

DIRECT EXAMINATION

BY MR. KAPLAN:

THE CLERK: Speak up so the last juror can hear you, sir.

THE WITNESS: Yes.

MR. MEISELMAN: Your Honor, before this witness testifies, I have considered a -- or presumed Mr. Signoriello will testify first. May I have a sidebar?

THE COURT: No. I can't -- the Government has the right to present its witnesses.

MR. MEISELMAN: It's not with respect to the order of proof that I'd like the sidebar, but with respect to this witness.

THE COURT: Well, we will have a sidebar.

(sidebar follows)

MR. MEISELMAN: I was furnished last night with a transcript of the Grand Jury minutes I believe concerning Mr. Foley.

Mr. Foley in that transcript had no conversations with Mr. McGrath. It would appear that he

had some conversations with Mr. LaGuardia concerning Mr. McGrath. What this witness will testify to is complete hearsay, none of which comes within the exclusions.

What he will testify to could have been testified to by Mr. LaGuardia when he was on the stand. The witness is available. To allow this witness to testify to what he may have told Mr. LaGuardia or what Mr. LaGuardia may have told to him when Mr. LaGuardia is available and was available would be complete hearsay, as not allowed by the Federal Rules of evidence.

THE COURT: Yes?

MR. TEITLER: Your Honor, as a factual proposition, this witness will corroborate the fact that Mr. LaGuardia told him that he had to pay off Mr. McGrath to use the parkway in 1972.

We submit that such a factual presentation by the Government at this time does come within an exception to the hearsay rule and specifically we believe it to be Rule 801(d) 1.

The provision in the rule Your Honor which says a statement is not hearsay if it is consistent with his testimony and is offered to rebut and express or implied charge of recent fabrication or improper

influence or motive. 841

In other words, this is the exception under the Hearsay rule where prior consistent testimony may be brought in and since the defense counsel attempted to impeach the prior witness with respect to the exact same issue, Judge, has been before the Second Circuit, Judge, on at least two occasions.

One in U.S. against Seito, which was an appeal from a ruling of Judge Dooling under the exact circumstance which appears at 467 F. 2nd, 401, 1972 and U.S. against Dorfman, which is 470 F. 2nd 246, Second Circuit, 1972 and these cases the Government did exactly what we are doing here, after its witness was impeached in order to show a prior consistent statement, prior to a motive existing to lie.

The Government introduced it in one case, five witnesses to do what we are about to do. We submit that the rule is clear in this Circuit that the Government's -- that this witness is entirely proper, under the circumstances.

MR. MEISELMAN: I ask that before Your Honor rules that you read the minutes of Mr. Foley. It's only several pages, to show that he was not asked about Mr. McGrath being paid by Mr. LaGuardia.

He testified about Mr. LaGuardia saying that

he can get the parkway for him for $10,000. and nothing ever came from it. So that the prejudice that would go to this witness -- to the defendant, that would inure to the defendant would far outweigh the so-called consistent statement because it's not consistent.

Mr. LaGuardia didn't testify that he had a conversation with Mr. Foley. As a matter of fact, if Mr. LaGuardia would have been asked about that conversation, it would have been objectionable and I believe Your Honor would have sustained it.

The Government cannot do by indirection what it could not do directly. If they couldn't ask Mr. LaGuardia to testify to the conversation, how can they ask somebody else to testify to the same conversation?

MR. KAPLAN: I'd like to be heard, Your Honor.

THE COURT: What is Mr. Foley going to testify to?

MR. KAPLAN: In essence this fact. Let me just say that Mr. Meiselman's proposition that Mr. LaGuardia could not testify as to himself as to a prior consistent statement that he made to somebody else, that's untrue because Mr. LaGuardia himself could have testified to it.

MR. MEISELMAN: Why didn't he --

MR. KAPLAN: Excuse me. Again, don't interrupt. We are putting this witness on for this proposition. That during obviously 1975, when Mr. LaGuardia was placed before the Grand Jury, as Mr. Meiselman brought out, there was a motive that then existed for him to lie. In 1972, years before any motive to lie existed, he made a statement to this witness saying in effect,"I can -- I work on the parkway. If you want to get on the parkway, I can introduce you to my man or my contact on the parkway. His name is McGrath. But you'll have to pay him $10,000. to get on the parkway."

That's consistent with his testimony. It's a statement consistent with all his testimony that in order to get on the parkway he had to pay McGrath a sum of money. It's -- unimportant whether Foley actually paid. It's just tending to show prior to this motive to lie existing he was telling people that to get on the parkway you had to pay McGrath $10,000.

(continued on next page)

MR. MEISELMAN: Your Honor, all it shows -- just that during these years Mr. LaGuardia would be as he was shown to be, a braggart about who he knows and doesn't know. What he says to Mr. Foley may be completely false because the record shows it was never followed through.

He was supposed to make an appointment and have dinner with him. That appointment never followed through.

The prejudice, the inflammation that goes to the jury here is beyond description, on a hearsay statement by somebody who could -- to which LaGuardia could not have testified to.

I ask your Honor to read the transcript. It's only a few pages.

THE COURT: I'll have to.

MR. KAPLAN: Let me say, talking about prejudice. It is not a matter of prejucice. It is a matter of hearsay. The question is whether it is recent -- whether it comes under the recent fabrication rule or not.

Talking about prejudice, in the Sito case they allowed five witnesses to testify to what one of the witnesses, said, just hearsay based upon what he had told him years before.

2 1 So it's not a matter of prejudice. 845 It's a
2 matter whether a motive to lie existed at one
3 point in time and whether this witness is used --
4 this statement is used as hearsay statement to
5 corroborate him as to a prior consistent statement.
6 It's a classic application of that rule.
7 MR. MEISELMAN: In addition, the rules require
8 if such a statement is to be used, that prior to
9 the trial or proceeding, I be given notice of it,
10 that I be given a copy of it.
11 MR. KAPLAN: Oh, please.
12 MR. MEISELMAN: That I be given the name and
13 address of the witness so that I have an opportunity
14 prior to trial to prepare for it.
15 MR. KAPLAN: What rule?
16 MR. MEISELMAN: I think the rules --
17 MR. KAPLAN: What rule?
18 MR. MEISELMAN: I think the rules --
19 MR. KAPLAN: Give us a rule.
20 MR. MEISELMAN: Please, Mr. Kaplan. I can
21 only act so quickly. Don't rush me. I'd like to
22 deal with one at a minute.
23 MR. TEITLER: YOu can use my copy of the
24 Federal Rules, if you want.
25 MR. MEISELMAN: I have a copy here.

MR. TEITLER: You are talking about the discovery rules.

MR. MEISELMAN: Please.

If you will abide with me for just a moment, your Honor? I know I had it last night. Here it is.

Speaking of exceptions under the hearsay rule --

MR. TEITLER: May I have my book?

MR. MEISELMAN: Sure.

MR. TEITLER: Tell us what section you are looking at, sir.

MR. MEISELMAN: I am referring now to Rule 803, I believe it's Subdivision 24 and they are referring to the exclusions under the hearsay rule. It says a statement not specifically covered by the foregoing exceptions but having equivalent circumstance guarantees of trustworthiness, if the Court determines, (a) -- and I skip -- to where the Court could determine that is more probative and it is material and so on.

However, a statement may not be admitted under the exception unless the proponent of it makes known to the adverse party sufficiently in advance of trial or hearing to provide the

adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

The only time I knew of this declarant was last night when I was given a copy of it. I have never heard of it before.

Now, in addition to everything else, I ask the Court this --

MR. TEITLER: May I address the Court, your Honor?

THE COURT: Yes.

MR. TEITLER: The citation that Mr. Meiselman is presently using, that's 24 under 801 does not apply to the situation here. 801, 24 applies to an item of evidence which the Court determines, it does not fall within the particular exception to the hearsay rule, but the Court determines in the interest of justice and because of its substantial probative value and its guarantee of trustworthiness may be admissible.

I used such a rule in a trial before Judge Neaher where an item of evidence came in, the declarant was dead. The item was hearsay and therefore it was offered under no particular exception

but under this sort of interest of justice exception. 848

This rule covers scientific evidence or something where cross -- where the requirement of cross-examination is no so severe.

In other words, where the document is almost guaranteed in terms of its reliability. This section under --

MR. MEISELMAN: That is not a document. It is a declarant.

MR. TEITLER: Let me finish.

MR. KAPLAN: I"m getting confused like a ping pong ball.

THE COURT: Hold it just a minute.

MR. TEITLER: The very rule itself, Judge, states that a statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the -- and the rule concerns itself with this type of piece of evidence.

We are not submitting the evidence under 801, 24, your Honor. We are submitting it under 801(d) and -- it is specifically covered by the rule and certainly there will be no exception for 801(d) since such a problem can never arise in

any other context other than the actual -- I'm 849 sorry.

THE COURT: It's 803.

MR. KAPLAN: By the rules. By the hearsay rules. That's what they are talking about in 803.

MR. MEISELMAN: If your Honor will read 801(d), it talks about prior statements of a witness who is the declarant, the witness being the person who had testified. It doesn't refer to another party concerning that witness.

THE COURT: It doesn't?

MR. TEITLER: Your Honor, 801 is really a definition of the part of the rules where it defines hearsay. 801,24 deals with the exceptions to the hearsay rules.

We are not claiming this comes within an exception to the hearsay rule. We are claiming this is not hearsay, pursuant to the provisions found in 801 which clearly say statements which clearly say statements which are not hearsay.

So what we are really dealing with is sort of apples and oranges and respectfully submit that Mr. Meiselman is interchanging the rules where interchanging cannot be. This is not a

hearsay statement. 850

MR. MEISELMAN: If your Honor pleases, if this is not hearsay, I don't know what is.

THE COURT: I see what I will have to do. I will have to take an adjournment and look into this particular issue.

I will see just what the Court will do.

(Continued on next page.

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GR/bw

MEISELMAN: I have been given citations 851 in the heat of the argument which I did not take down. May I have them?

MR. TEITLER: I'll give them to you at the counsel table, Mr. Meiselman.

THE COURT: What about Foley's 3500?

MR. KAPLAN: Turned over last night?

THE COURT: No, for the Court to use in connection with this.

MR. KAPLAN: It's right here, your Honor. I would direct the Court specifically to pages --

MR. MEISELMAN: Your Honor says he's going to declare a recess?

THE COURT: Yes.

MR. MEISELMAN: How long? For the day?

THE COURT: No, around a short while. We will look at it now. Maybe a half hour.

MR. MEISELMAN: All right. We will have the opportunity of researching this and see whether these cases are proper or not?

THE COURT: Do you have another witness or you must move with this one?

MR. KAPLAN: We have another witness, Judge, but the problem is bringing this witness back. His testimony will take 15 minutes.

THE COURT: Whose testimony? 852

MR. KAPLAN: Signoriello is the next witness. He'll take until next week anyway.

MR. MEISELMAN: This witness' testimony may take 15 minutes, but it may give Mr. McGrath 15 years.

MR. KAPLAN: Oh come on. Whoever heard of statements like that?

MR. MEISELMAN: I'm saying it to His Honor outside the presence of the jury. You cannot say because a witness takes 15 minutes it is more important or not important.

MR. KAPLAN: We will tak an adjournment for that purpose.

THE COURT: We will take an adjournment and look at this.

MR. KAPLAN: The statement that Mr. Meiselman said about him not knowning that there was such a witness is untrue, because in the LaGuardia indictment, he has asked about statements by Joseph Foley and he denies it and that formed the basis for his perjery indictment. So Mr. Meiselman knew the man Joseph Foley --

MR. MEISELMAN: I don't know who Joseph Foley is. I don't know what his address is.

I don't know if they intend to use him or not. If they --

THE COURT: I'll have to take an adjournment and look at this.

MR. KAPLAN: Thank you.

MR. MEISELMAN: If they intend to use him, I think the least they should have done was let me know in advance of trial.

MR. KAPLAN: We only knew that LaGuardia took the stand.

MR. TEITLER: We are providing -- we provided the actual cases to Mr. Meiselman now for his perusal.

MR. MEISELMAN: But are there cases contrary?

MR. KAPLAN: There are no cases contrary on this point.--

MR. MEISELMAN: Please.

MR. KAPLAN: -- that we have researched.

THE COURT: I will take a short adjournment.

(In open Court)

THE COURT: Ladies and gentlemen, the Court is going to take an adjournment and we will resume at about 3:30. If you care to go

down and get coffee or something in the meantime, but please do not discuss the case. 854

We will take a short adjournment. The jury may leave.

(The following occurred in the absence of the jury).

THE COURT: All right.

(Recess taken)

(After recess.)

THE COURT: Are you ready?

MR. MEISELMAN: Your Honor, tapes were given by Mr. Kaplan to a gentleman from the court reporters. That gentleman has advised me he expects a transcript to be ready and given to me on Tuesday morning.

THE COURT: All right.

MR. KAPLAN: Let me just say for the record, your Honor, that we have no objection to him playing them today or at any time. As far as we are concerned they have been marked and our responsibility has been met.

MR. MEISELMAN: Now, your Honor, with respect to the application which is before the Court --

THE COURT: Well, I have looked at them in chambers.

MR. MEISELMAN: I have read those two cases. I respectfully submit that they are inapposite for the reason that in those cases the testimony given by the declaimant was parallel with the testimony and it distinctly related to the very charges. In other words, there was a statement made concerning that transaction itself.

In the case at bar it is not a statement concerning the transactions in issue here. It was never brought

to fruition. It was made in a bar. It has nothing to do with the indictment.

Now, anybody in a bar can make a statement. Now if that statement had been brought to fruition, and if he had met somebody, and if we knew it was so, I would say, yes, I think it is proper. But here where we cannot even have a chance to determine who this man is, or cross-examine him properly, to allow his testimony without proper notice and without proper investigation, where his testimony is not parallel to what the witness has said, would so prejudice this jury that, your Honor, I honestly believe that I could not possibly have a fair verdict from the jury.

THE COURT: Mr. Teitler?

MR. TEITLER: Your Honor, I submit to the Court that there is no such rule enunciated in two Circuit Court of Appeals cases, or in the annotations to the Federal Rules of Evidence, which is in conformity with what the defense counsel states. There is no rule which requires that testimony must be elicited. And then to use the recent fabrication rule, the Government will have to do something in hoc verba, it had need not relate specifically to the exact words or the exact testimony that was brought out by the defense. Indeed in United States against Dorfman, the

Second Circuit specifically ruled on such a question by saying that the defense had attempted to show that Horvath had motives of personal revenge for falsely implicating Dorfmann, the defendant. In other words, the whole line of cases and the thread -- and the thread between the cases is that so long as the defense attaches the credibility and the motivation of a particular witness the Government is entitled to show by -- in such a manner as we are doing, that at a time when there was no reason to testify falsely, when no motive existed -- indeed the witness stated entirely consistent testimony, in other words, your Honor will recall that Meiselman during his opening attacked these witnesses in front of the jury by saying that these are witnesses who were given immunity; these witnesses were liars; these are witnesses who have every motive in the world to lie -- indeed that was the sum and substance of his entire cross-examination, the issue being whether or not the defendant, Mr. Mc Grath, actually made the payments, at least insofar as the Government concedes -- the defense is that the payments were never made. And, that, it seems to me, was the entire line of the cross-examination --

MR. MEISELMAN: Your Honor --

MR. TEITLER: -- and that is all that has to exist, your Honor to trigger the rule that we are trying to implement by the rules of evidence. And that is exactly what happened in Dorfmann. And that is exactly what happened in all of the cases cited by the Government.

MR. MEISELMAN: First I think it was evident to the Government from the very beginning that the issue in this case would be one of credibility. And they knew that we would have to attack and would attack, and if we did not attack would be derelict in our duty, the testimony of Mr. La Guardia by his prior testimony in the Grand Jury.

They knew they would have to bring in another witness as they are doing now.

We never received notice of it. We knew nothing about it.

Now, the Zito case says you can use it if the testimony parallels the transaction he is talking about, that is, it had to do with the very transaction--in a sense that if I were to attempt to extort money from your Honor and I induced a state of fear in your mind, and you were, during sometime, to make a statement to Mr. Weinberg, and if I attempt to impeach your Honor's credibility with respect to it, I think

that under the rule Mr. Wienberg would have a right to come in and testify that you have spoken to him concerning that. It would be his ear, it is true, but I think it comes within the rules. But that is not the case here. That transaction had nothing whatsoever to do with this case. It didn't parallel it. It was never brought to fruition. At best it is a statement made in a bar by somebody whose credibility is evident to start with, and now weighing that against what it would mean to a jury shows that it's highly inflammatory. How can I cross examine Mr. Foley about a statement he made in the bar. I don't know who he is. I don't know what he does. I don't know his conviction record, I don't know anything about him. I think it would be highly unfair and improper.

I don't know what else I can say in articulating how strongly I feel about this point.

THE COURT: Anything further, Mr. Teitler?

MR. TEITLER: Only, your Honor, that the Dormnann case, to use the arguments just propounded by defense counsel, if anything, they go to make out the Government's case here.

The defense in that case tried to show that the witness had a motive for personal revenge. And that in and of itself -- that line of questioning

triggered by the defense, not the Government, triggers the application of the rule.

MR. MEISELMAN: That would mean if we follow it through to it's conclusion then every time a defendant's counsel cross-examines a witness of the prosecution and attacks his credibility, which of course is the purpose of the cross-examination, that any statement that person has made may be brought in by somebody else?

Mr. La Guardia was here. He could have been asked about it. He is gone. I have no control over him. I don't know even where to find him. Can I bring him back to be cross-examined with respect to a statement I had made.

THE COURT: Well,if you want him back he can be brought back.

MR. MEISELMAN: I would presume so, your Honor. But at this late stage? He was on the stand. If I bring him back now I am compounding the prejudice.

I have made my position clear, I believe.

THE COURT: Thank you.

TEITLER: I just wanted to also add very briefly, your Honor, that there is no rule on the rules of discovery. I believe that I submitted the appropriate authority to the Court to show that the rule of evidence

cited by Mr. Meiselman is not relevant to what we are talking about here. There is no discovery rule which would have required the Government to turn over names and testimony, whatever the defense just raised and claimed we ought to have done.And in addition Mr. Meiselman stated that when this happens in a court-room you can show a prior consistent statement and is in effect the sum and substance of the rule.

MR. MEISELMAN: If that were just the case we are arguing I wouldn't quarrel. A prior consistent statement concerning what he testified to, that is, his transactions with Mc Grath, my position would be untenable. But not with respect to what he had said about something that is not directly connected with the testimony concerning his transactions with Mc Grath.

He could have gone all over Mineola saying, "I have got a friend; I have got a friend. I can pay you money," whether it is true or not. How can we possibly disprove that. We have to be given an opportunity to meet the evidence.

THE COURT: That is it?

MR. MEISELMAN: That is it.

THE COURT: Anything else?

MR. TEITLER: No.

THE COURT: All right, the Court has examined

in camera the Grand Jury minutes of Joseph Foley as a witness and has gone over the Rules which counsel have put before the Court as being applicable in this particular situation, and has examined the cases which counsel has spoken of during their argument, and which was specifically brought to the Court's attention.

Rule 803 subdivision 24, which requires prior notice, the Court finds to be inapplicable. And the defendant's position on the law is incorrect. The statement is not being offered for the truth of the matter stated therein but rather for the fact that the statement was made.

The controlling rule which the Court finds is 801(d)1(b), and under this particular rule the statement is not heresay. 801(d)1(b) sets forth that a statement is not heresay consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive.

The Court finds that the evidence is clearly relevant. The Court has balanced the prejudice against the approbative value under 403. And the Court finds that the approbative value clearly outweighs the possible prejudice. This is especially true in as much as the defendant opened the door by attacking La Guardia

as a recent fabricator. And the Government should be permitted to address itself to this relevant and material issue.

The Court finds that the evidence is clearly relevant.

MR. MEISELMAN: I respectfully take exception, your Honor.

THE COURT: Thank you.

Bring in the jury.

Mr. Foley, come back up.

(The jury thereupon returned to the courtroom at 3:44 o'clock p.m.)

J O S E P H F O L E Y, called as a witness having been previously duly sworn resumed the stand and testified as follows:

THE COURT: Mr. Kaplan, you may proceed.

(Continued on the next page)

MR. KAPLAN: Thank you Your Honor.

BY MR. KAPLAN:

Q Please state your name for the record?

A Joseph Foley, F-O-L-E-Y.

Q Where do you presently reside --

MR. MEISELMAN: Excuse me, Your Honor, so that I may not unnecessarily interrupt, may I have a continuing standing objection in line with the request I made prior to the Jury entering the Courtroom.

THE COURT: Yes, Mr. Meiselman, you have a continuing objection as to the testimony.the Court is to receive.

BY MR. KAPLAN:

Q Sir, what is your present occupation?

A I am a builder.

Q What type of building do you do?

A New Homes.

Q What is the name of the business that you are associated with?

A Centinnial Homes.

Q How old are you, sir?

A Forty-three.

Q Are you married?

A Yes.

Q Do you have children?

A Yes.

Q Now, sir, I direct your attention to the year 1968 or thereabouts, what was the nature of your business during that year?

A I had a managerial contract with Humble Oil on a gas station on Southern State Parkway.

Q And when you say a contract with Humble Oil, what did you do?

A I was manager and I was in charge of gasoline and oil and hiring and firing people.

Q Did you have any association with the Long Island State Park Commission?

A Personally, no.

Q Do you know what the Long Island State Park Commission is?

A Yes.

Q And during what period of time were you associated with this particular gas station on the Parkway?

A From August 1968 through October 1969.

Q Did there come a time when your contract was terminated?

A Yes.

Q When was that?

A In October of 1969.

Q And will you tell the jury under what circumstances your contract was terminated?

A I lost money in business.

Q And did you have any other type of problem at that time?

A With the help?

Q Well, did you have any type of personal problems?

A Yes, I had gotten divorced.

Q Well, is there anything else?

A No.

Q Now, after you terminated the contract --

MR. KAPLAN: Withdrawn.

Q Did there come a time when you met an individual known as Victor LaGuardia?

A Yes.

Q When did you meet Mr. LaGuardia?

A In 1972.

Q Where did you meet him?

A I met him at a bar in Mineola.

Q What was the name of the bar?

A Round Table.

Q And did there come a time when you had a

particular relationship with Mr. LaGuardia?

A Yes. I used to see him there every night. We got kind of friendly.

Q You were friends?

A We became friends.

Q Did there come a time when you had a particular conversation with Mr. LaGuardia?

A Yes.

Q Do you recall when that conversation took place?

A When?

Q When?

A In late '72, the fall. I don't remember exactly when.

Q What did you say to him and what did he say to you?

A Well, I had known that he had owned a body shop, that's all I knew. Then I found out later on --

MR. MEISELMAN: Objection if Your Honor please. I think the question was what was said to each other.

THE COURT: Well, ask him the question what did he say.

Q Do you know what his business was?

A I know his business was a body shop.

Q Did there come a time when you learned anything else about the business?

A Well, yes, then I found out that he had a Parkway concession for Triple Arc towing and repair service on the parkway.

Q So what did you say to him?

A Well, I told him that I at one time had the managership for the Parkway Gas Station, and I had lost it, and I had made some mistakes in business there, but I thought it could be a good business and I was interested --

Q You were interested --

A I thought it could be a good business, and so forth. And then he asked me --

Q What did he ask you?

A He asked me if I wanted to get back.

So I said, "Yes."

Q Then what did he tell you?

A Well, he told me that he would arrange to have dinner some evening with Mr. McGrath and that we could work something out. It would probably cost me -- I remember the figure of $10,000 -- To get back on the Parkway.

Q Did he tell you who Mr. McGrath was?

A No, he didn't tell me exactly who he was because I had known who he was from my previous position on

the Parkway.

Q What did he tell you about the meeting with McGrath in any event?

A He was going to set it up.

Q And what was going to happen?

MR. MEISELMAN: Objection.

THE COURT: Sustained.

Q What else was said during this conversation when McGrath's name was mentioned?

A Discussed his getting myself back onto the Parkway.

Q And what else?

A And the possible payment of $10,000.

Q To whom?

A To Mr. McGrath.

Q Did this situation ever come about, the meeting with Mr. McGrath?

A No.

Q Explain for the jury.

MR. MEISELMAN: Objection, Your Honor.

THE COURT: Sustained. Don't answer the question.

Q Did there come a time in early '70 or so when you were convicted of a crime, where you pled guilty to a

crime?

A Yes.

Q What crime was that?

A Grand Larceny.

Q Explain that to the jury.

MR. MEISELMAN: I object if Your Honor please to the question of "Explain." I would like this witness to testify as to direct questions. I don't know what "Explain" means.

Q What was the crime?

MR. KAPLAN: That's a direct question.

THE COURT: He said grand larceny.

Q What did you do?

A When I was on the parkway I had two checks that bounced for $1500.

MR. MEISELMAN: I am sorry. I didn't hear that.

THE WITNESS: I had two gasoline checks that bounced from $1500. I was indicted.

Q Did you plead guilty?

A On a reduced charge.

MR. KAPLAN: I have no further questions.

THE COURT: All right, there will be cross examination by Mr. Meiselman.

* * *

evidence.

THE CLERK: One subpoena marked Government's Exhibit Number 68 in evidence.

(so marked)

THE COURT: You may proceed, Mr. Teitler.

MR. TEITLER: Mr. Kaplan will now.

THE COURT: Mr. Kaplan.

MR. KAPLAN: The Government calls Randolph Taylor.

R A N D O L P H W. T A Y L O R JR. , called as a witness having been duly sworn by the Clerk of the Court testified as follows:

DIRECT EXAMINATION

BY MR. KAPLAN:

Q Mr. Taylor, where do you presently reside?

A 2 Sylvan Street, Bay Shore, New York.

Q I'll ask you to keep your voice up so the last juror can hear you. What is your present occupation?

A I'm the co-owner of the Yacht Sales and Service Organization.

Q Where is that located?

A Freeport, New York.

Q What type of services do you perform there?

A I sell luxury pleasure yachts and we service them.

Q What's your position in the corporation?

A Vice-president, general manager.

Q How long have you been associated in this particular business?

A Approximately two years.

Q Prior to that time, what was your occupation?

A Police officer.

Q Now, during the years 1966 through 1971, by whom were you employed?

A Long Island State Parkway Police.

Q In what capacity?

A Patrolman.

Q What were the nature of your duties and services which you performed at that time?

A Highway patrol, law enforcement.

Q During the year 1968 or thereabouts, did you have occasion to have another job?

A Yes sir, I did.

Q What job was that?

A A part time job at Sal Gullo's garage in Lindenhurst.

Q G-U-L-L-O ?

A Yes.

Q Who was the proprieter of Sal Gullo's garage?

A Sal junior.

Q Sal Gullo Jr?

A Yes, sir.

Q In what capacity did you work at Sal Gullo's garage?

A I used to dispatch his tow trucks, organize his tow tickets, clean the shop up, clean my car.

Q During what years or year did you work there?

A Approximately the end of 1967 into 1968.

Q Do you recall if it was a year or more than a year or what?

A A little less than a year.

Q Now, during the time that you were working at Sal Gullo's garage, would you work -- how many hours a day?

A Daytime, I probably work about five hours, at night I generally worked about eight.

Q What would you do with the Parkway Police during that time?

A I would perform my normal eight hour tour of duty, eight to four or four to eight.

Q Was that permitted during that period of time?

A Yes sir, it was.

Q Were there other people in the Parkway Police that had similar jobs such as yours?

MR. MEISELMAN: Objection.

A Yes, sir.

THE COURT: I'll permit it. The objection is overruled.

Q Do you recall a particular incident that occurred in Sal Gullo's garage?

A Yes, sir.

Q Do you recall when it took place, what the year was approximately?

A Approximately 1968.

Q Do you recall what happened at that point in time?

A Yes, sir.

Q What happened?

A I was in the small office adjacent to the main part of the garage and I was numberically organizing toll tickets and recording them in a log. And Sal's wife and he went in the office with me and they were counting out the money.

MR. MEISELMAN: Your Honor, would the witness keep his voice up just a bit please.

THE COURT: Yes. A little louder, please.

A Sal and his wife were in the office and they were counting out money. They had various stacks of bills

on the desk. And Sal took a stack of bills, slipped them in a white business size envelope and put it in his upper shirt pocket of his uniform.

Q Before you continue, do you recall the denominations of those bills offhand?

A I saw twenty dollar bills.

Q How many twenty dollar bills, do you recall?

A I don't know the dollar amount. I would say it was about a stack of a quarter of an inch at least.

Q Could you give it with your finger to the jury?

A About so.

Q Was it more than ten?

A Yes, sir.

Q So you say he put it in an envelope and stuffed it in his front pocket?

A Yes, sir.

Q Then what happened?

A He walked out of the office.

Q What's the next thing that you observed?

A I walked out of the office approximately five minutes later to get a cup of coffee. And a gentleman walked through the over-head door which was up in the garage and he walked up to Sal. Sal handed him the envelope. He

turned toward my direction and he left.

Q Whom did he hand the envelope to?

A Mr. McGrath.

Q The first name?

A John.

Q Do you see him in the courtroom?

A Yes, sir.

Q Point him out?

A The gentleman sitting over there.

MR. KAPLAN: Indicating the defendant, John McGrath?

THE WITNESS: Yes, sir.

Q Now describe exactly what you saw with respect to the handing of the envelope?

A Sal reached in his -- into his top pocket, took the envelope --

MR. MEISELMAN: I'm sorry. I can't hear.

MR. KAPLAN: Louder sir.

THE COURT: Reached into his top pocket and took the envelope out.

A And he pointed in his direction and he accepted it.

Q Was this the same envelope that you saw with the money put into?

A Yes, sir.

Q Then what happened?

A Mr. McGrath turned slightly toward my direction and then he turned around and walked out the door.

Q Did he give you a look or anything at that point in time?

A No.

Q How about Sal?

A Sal turned around and did like that, and walked away.

(indicating)

Q Now, with respect to the specific time that you fixed, can you fix a more definite time? Or do you need something to refresh your recollection as to the time of the year?

A It was warm. It wasn't hot. I'm just not sure what month it was. It was warm though.

Q I show you what's been marked as Government's Exhibit 3500-35 and ask you to read the second paragraph and ask you if that refreshes your recollection as to the time of year? Does that refresh your recollection?

A Yes, it does.

Q When did it occur?

A It was in the fall of the year.

Taylor-direct

Q What year?

A 1968.

Q Now, did you have any relationship with Mr. McGrath yourself?

A No, sir.

Q Did you have any dealings with the man personally?

A No, sir.

Q What's the next thing that happened with respect to yourself after this particular incident?

A The very next day I was calledinto the Chief's office of the Parkway Police.

Q What was his name?

A Nicholas T. Landers.

Q What happened?

A I was told that I had to leave Sal's employ, to resign. There was a conflict of interest.

Q The next day?

A The next day.

Q Did you resign?

A Yes, I did.

MR. KAPLAN: I have no further questions

THE COURT: Cross-examination.

(continued on next page)

Taylor-cross

CROSS-EXAMINATION

BY MR. MEISELMAN:

Q I thought you resigned in 1971, sir?

A I beg your pardon, sir.

Q I said, I thought you resigned in 1971?

A From where?

Q From the Parkway Police?

A He didn't ask me about the Parkway Police.

MR. KAPLAN: That wasn't the question.

THE COURT: Sal Gullo's

Q You resigned from Sal Gullo's garage?

THE COURT: It was Sal Gullo's.

MR. MEISELMAN: I beg your pardon.

Q Had you been having any trouble with Chief Landers before this time?

A No, sir.

Q Are you positive?

A I won't say I'm positive, no.

Q Would you please search your recollection and tell us if you remember having difficulities with Chief Landers before the fall of 1968?

A I don't remember sir.

Q What is that?

A I don't remember sir.

Taylor-cross

Q Do you recall an incident in Christmas of 1967 where you observed -- Chief Landers do something, at Mr. Ancona's garage?

A Yes, sir.

Q What did you see Chief Landers do?

A Carry some liquor to his car.

Q How much liquor?

A Two cases.

Q Now, after that, weren't -- didn't you state that you had trouble with Chief Landers?

A Briefly.

Q So your relationship with Chief Landers was not that good, was it?

A No, sir. it wasn't.

Q Now Officer, when you observed Chief Landers in the fall of 1967, that's almost a year before, isn't it?

A That's correct.

Q Carrying these cases of liquor, did you think he was doing anything wrong?

A Yes, sir.

Q Did you report that to anybody?

A No, sir.

Q You are a police officer -- you were a police officer then?

A That is correct.

Q You didn't go to the Park Commissioner and report it?

A No.

Q Go to any of your superiors and report it?

A He was the superior.

Q Other than him?

A No, sir.

Q Well, Mr. or Chief Landers had superiors, didn't he?

A I would assume so.

Q Well, do you know?

A I'm certain he did, sir.

Q Did you go to them?

A No, sir.

Q Now, you were in the office and you were arranging some tow tickets with this incident with Mr. McGrath, is that correct?

A That is correct.

Q Then you finished that and you went out to have a cup of coffee?

A Yes, sir.

Q Right?

A Yes, sir.

Q Now, between the time you saw that you saw Mr. Gullo put an envelope in his pocket and the time that you say you saw Mr. Gullo give it to Mr. McGrath, how much time elapsed?

A Approximately ten minutes.

Q And did you have Mr. Gullo under your observation during all that time?

A No, sir.

Q Do you know if that envelope which he took out of his pocket is the same envelope he put in?

A I believe it was the same.

Q No. I'm not asking your belief. Do you know?

A I would say yes, sir.

Q How do you know?

A It appeared to be the same. Looked the same.

Q It was white?

A Yes, sir.

Q The same size?

A The same size.

Q No markings on it?

A Not that I noticed, sir.

Q So you really cannot tell if it was the same?

MR. KAPLAN: I'm going to object, Your Honor. He said it was the same.

THE COURT: Sustained. Don't answer that question.

Q Did you report that to anybody?

A No, sir, I didn't.

Q Did you think that anything wrong was going on?

A Yes sir, I did.

Q When is the first time that you can recall ever speaking to anybody about this incident?

A I believe 1974.

Q That would be approximately six years later? Is that right?

A That would be about correct sir.

Q And you remembered the incident, the amount of time, where it was, the color of the envelope, the size, what you observed, everything?

A Yes, sir.

Q You are rather angry at the State Police and at the Park Commission, aren't you?

A No, sir.

Q Haven't you claimed -- at various times that you were being harassed by the Park Police?

A Yes, sir.

MR. KAPLAN: I'm going to object at this point

Taylor-cross

Your Honor as to relevance as to Mr. McGrath. He wasn't a member of the Park Police.

THE COURT: No. Objection is overruled.

Q Did you come forward voluntarily at any time and give this information?

A No, sir.

Q After you left the Park Police in 1971, did you report this incident to anybody?

A No, sir.

Q Did you discuss it with any of your fellow officers?

A Yes, sir.

Q With whom?

A The treasurer of the PBA.

Q And that was in 1974?

A No, sir.

Q When?

A I believe that was in '72.

Q In '72. Was he an officer of the police?

A Yes, sir.

Q What rank did he hold?

A Patrolman.

Q Did he report it?

A I don't know sir.

Q Now I asked you, sir, before, when is the first time you spoke with anybody about this from the time it happened until now and you stated not until 1974. Is that right?

A I don't remember. You have to read it back to me.

Q Well, don't you remember what you said just a few minutes ago?

A I don't remember sir.

Q But you remember what happened in '68?

MR. KAPLAN: I object. He's arguing with the witness Your Honor.

THE COURT: I'll permit it.

Q Is that right?

A Yes, sir.

Q By the way, do you know Sal well? Sal Gullo?

A Not very well.

Q How well do you know him?

A As an employer-employee relationship.

Q That's the only way?

A BAsically, yes.

Q Does Mr. Gullo have a boat?

A I don't know sir.

Q You don't know that at all?

Taylor-direct

A No, sir.

Q Was there any regulation in effect in 1967 and in 1968 of the Parkway Police that you could not accept employment with people with whom you came into contact with in your official duties?

A I don't know, sir.

Q Well, when Mr. Kaplan asked you a question whether there was a conflict of interest and if it was allowed, you said, no, there -- it was allowed, isnt that right?

A You'd have to rephrase the question sir. I don't remember.

Q You dont remember what you told Mr. Kaplan?

A I don't remember how he put the question.

Q My best recollection is he said, were you allowed to have such an outside job and your answer was, yes?

A Yes, I was.

Q I now ask you if there was any regulation prohibiting you from taking a job while a Parkway Policeman with a company that you did daily business with?

A I really don't know, sir.

Q So that when you answered Mr. Kaplan that you could do it, you didn't know?

A I was permitted to do it.

Q By whom?

A Nobody ever said anything.

Q In other words, if nobody says anything, you are allowed?

A That is correct.

Q And that was your philosophy then?

A That was their philosophy, sir.

Q I'm asking you about your philosophy?

A My philosophy? I could do it.

Q Did you ask anybody?

A Sure did.

Q Who?

A Chief Landers.

Q And did Chief Landers say you could do it?

A He did.

Q After you spoke with Chief Landers and he said you could do it, then he called you in and said there was a conflict, did you remind him of what he had said?

A Yes.

Q What did he say?

A I never said that.

Q Did you remind him of what he had said about permission?

A Yes, sir.

Q What did he say?

A I never said that.

Q The Chief said to you he had never given you consent, is that correct?

A That is correct.

Q And then you started complaining of harassment?

A That is correct.

Q Is that right?

A Yes.

Q The harassment I think you claimed was that you were arrested several times?

A That is correct.

MR. MEISELMAN: No further questions.

REDIRECT EXAMINATION

BY MR. KAPLAN:

Q Now tell the jury now that Mr. Meiselman has asked you the question about the arrest, tell the jury about the arrests?

A The first arrest was in 1968 --

MR. MEISELMAN: Will the witness please keep his voice up.

A The first arrest was in 1968, the endof 1968. Approximately just before Christmas. I was arrested and

charged with rape, the third, which is an underage female.

Q Statutory rape?

A Yes, sir.

Q Tell the jury what happened?

A The case was dismissed. The Suffolk County District Attorney's Office said the people did not wish to prosecute. There was no case.

Q Next case?

A The next one was harassment in 19 -- no it was criminal mischief in 1971. Approximately July 3. I was charged of having punctured two tires of a car in a Jones Beach State parking lot. The charge went to court. It was reduced to harassment and dismissed.

Q What's harassment? Fine, summons?

A Summons.

Q Not a crime?

A No, sir.

Q Mr. Meiselman asked you about not reporting this incident to anybody. Tell the jury why you didn't report it to anybody?

MR. MEISELMAN: Objection Your Honor.

THE COURT: I'll permit it, since you asked that he didn't. I'll permit him to explain it. You may explain it, Mr. Taylor.

Taylor-redirect

A I felt that there was no way that I could possibly report this to any of my superiors and have any action taken because I had observed narcotics traffic in the State Parks, wrote a report, submitted it. The report was disappeared and I was transferred the next day. That's happened on numerous occasions.

Q With respect to your own welfare, as to reporting this, what did you believe?

A I feared for my wife and my children. I have six of them.

MR. KAPLAN: No further questions.

THE COURT: Mr. Meiselman.

RECROSS-EXAMINATION

BY MR. MEISELMAN:

Q I can understand, sir, perhaps why you didn't do anything about this while you were with the police, but then there came a time when you left the police. Is that correct?

A That is correct.

Q And you were no longer afraid of your superiors?

A Yes, I was.

Q And there are authorities in this country above your superiors, aren't there?

A Yes, there is.

Q And you never reported it to them?

A No, sir.

Q Now you say the charge was reduced to harassment?

A Yes, sir.

Q And then dismissed?

A Yes, sir.

Q Dismissed on what basis, nonappearance or what?

A I don't know sir.

Q Were you in Court?

A Yes, sir.

Q Were you in Court when it was reduced?

A Yes, sir.

Q Reduced from what to what?

A Criminal mischief to harassment.

Q And you have a copy of anything which would show the dismissal?

A My attorney does.

MR. KAPLAN: I'm going to object to this, Your Honor. He's not entitled to go into arrests that were dismissed. Only convictions.

THE COURT: Was there any trial on it?

THE WITNESS: NO,sir.

THE COURT: No trial?

THE WITNESS: No trial, sir.

THE COURT: You say even after you left the State Police, you still were in fear of reporting this?

THE WITNESS: Yes, sir.

THE COURT: And you felt that something could happen to you?

THE WITNESS: Yes sir, I did.

THE COURT: Anything further, Mr. Meiselman?

How powerful was Chief Landers?

MR. KAPLAN: I object. That's a highly speculative --

THE COURT: I'll let it go. How powerful is Chief Landers? Please sit down.

THE WITNESS: I dont know how to answer that Your Honor.

THE COURT: Well, if you can't answer, say "Idon't know". If you can answer it, tell him.

THE WITNESS: Well, I just know what he did to me. That's the only way I can answer it.

THE COURT: That's as much as your knowledge is?

THE WITNESS: My knowledge is that he took a case that wasn't even in his jurisdiction and he

just transported the witnesses around and the complaints and it wasn't even in his jurisdiction.

Q My question is, how powerful is, do you know? Does Chief Landers, for instance, control the U.S. Attorney's Office, in your opinion?

MR. KAPLAN: I object to this. Highly improper.

THE COURT: Sustained. Don't answer that question.

Q Does the Chief have any influence here? Do you think?

MR. KAPLAN: I object to this at this point Your Honor.

THE COURT: Well --

MR. KAPLAN: It's obvious. The testimony is obvious.

MR. MEISELMAN: I want to know what's in his mind.

THE COURT: I dont think this witness knows what his influence is here. You can tell us what influence you know -- has, if you know.

Q Would you have been afraid to come to the U.S. Attorney's Office for narcotics and for the other things?

A No.

Q But you didn't? You were a police officer?

A On narcotics I did.

Q Narcotics you did?

A I did.

Q You came to this office?

A Not this particular office.

Q Which office?

A Went through the Suffolk County Police Department.

Q Did they investigate?

A Yes, they did.

Q They come up with anything?

A Yes, they did.

Q What did they do about it?

A The man was convicted.

Q So you weren't afraid to go to the Suffolk County Police Department and make a complaint when you found something wrong, were you?

A That was on narcotics.

Q I see. I thank you.

MR. MEISELMAN: No further questions.

MR. KAPLAN: One further question.

REREDIRECT EXAMINATION

BY MR. KAPLAN:

Q You were asked today about coming in, telling

somebody voluntarily about this incident. Did you tell the Government about this voluntarily?

A Yes, sir.

Q You were never brought before any Grand Jury or subpoenaed or anything like that, were your?

A No, sir.

Q You fully volunteered this information, didn't you?

A Yes, sir.

MR. KAPLAN: No further questions.

THE COURT: Yes, Mr. Meiselman.

RERECROSS-EXAMINATION

BY MR. MEISELMAN:

Q Did somebody come to you or did you come to somebody else when this information came out?

A Someone came to me.

Q Did he come alone or with somebody else?

A With someone else.

Q Some one who knew you?

A No.

Q By the way, did you retire from the Police Department, the Parkway Police or were you dismissed?

A No. I resigned.

Q You resigned?

A I resigned.

Q Did you resign under fire?

A No, sir.

Q No charges pending?

A No charges pending.

MR. MEISELMAN: Thank you very much.

MR. KAPLAN: Thank you, Mr. Taylor.

THE COURT: Thank you. You're excused.

All right. You may proceed, Mr. Kaplan or Mr. Teitler.

MR. KAPLAN: The Government calls William Delaney.

W I L L I A M D E L A N E Y , called as a witness having been first duly sworn by the Clerk of the Court testified as follows:

DIRECT EXAMINATION

BY MR. KAPLAN:

Q Mr. Delaney, what is your present occupation?

A Director of the Jones Beach State Parkway Authority.

Q Any other position that you have at the present time?

A Executive secretary of the Long Island State Park and Recreation Commission.

* * *

Since that time I have had the opportunity to check the records of the Court and the records of the Long Island State Park Police.

Before Judge Lotman in Nassau County Court, he admitted all of the charges of the complaint. Since he was a Parkway officer, in order that he may not be convicted of a misdemeanor, he pleaded guilty to a lesser offense.

THE COURT: Harassment.

MR. KAPLAN: That's what he said.

MR. MEISELMAN: But nevertheless --

THE COURT: He didn't say that.

MR. MEISELMAN: But nevertheless admitted all of the allegations of the complaint against him which are rather severe.

In addition he did resign under fire, Your Honor, because there were charges against him. There were also charges of discipline against him which he pleaded guilty to before the department.

Now, I would like that witness to be returned, Your Honor.

MR. KAPLAN: Judge, as I understand the law, a witness -- Any witness cannot be questioned about misdemeanors that are not in the nature of crimes or moral turpitude, or don't reflect credibility such as

do these things. Because Randy Taylor's name was given to him months ago as a -- In a witness list. I gave him the -- Withdrawn.

I gave him the 3500 material three or four days ago. He could have found this out.

THE COURT: But Mr. Meiselman can't anticipate that the man is not going to tell the truth.

MR. KAPLAN: Judge, he can find out what type of witness he is going to be. He waited until this man left the stand.

THE COURT: No use in making any -- If the man lied, the Jury's entitled to know the discrepancy.

MR. KAPLAN: There might be a misunderstanding. If he lied, he would have to be confronted by --

THE COURT: Do you want to bring him back?

MR. KAPLAN: No.

THE COURT: Then if you don't want to bring him back, then listen to what is being done.

If you want to bring him back, you can bring him back.

MR. MEISELMAN: Can I have his address, Mr. Kaplan?

MR. KAPLAN: I think his address is in the record.

MR. MEISELMAN: I don't have a copy.

THE COURT: You will furnish Mr. Meiselman with his address and phone number. That you will do. The Court is ordering you to do that.

MR. KAPLAN: I will.

THE COURT: Yes, sir.

MR. MEISELMAN: Number two, Your Honor -- or number three -- I don't recall any more.

The exhibits -- I am sorry.

THE COURT: Yes sir.

MR. MEISELMAN: I may be able to prove instead of trying to subpoena the man -- I don't know whether I will succeed or not.

I may be able to do this through the police officers and the Police Department through their official records.

THE COURT: You can do it either way.

MR. TEITLER: Just for Mr. Meiselman's convenience, the witness' phone number -- If you want it -- Is 516 623-2299. That's the only information we have in front of us now.

THE COURT: Give him the address.

MR. TEITLER: Whatever other information we have that we can locate, we will provide.

MR. MEISELMAN: Business and home.

MR. KAPLAN: We don't have his home.

MR. MEISELMAN: Give me his business address.

THE COURT: All right. They will give you whatever they have.

MR. MEISELMAN: Now, Your Honor, with respect to these things that have been set up in the Courtroom, I don't know if Your Honor can see them or not.

THE COURT: I can see them.

MR. MEISELMAN: I have certain objections with respect to them.

THE COURT: I see.

MR. MEISELMAN: I presume they are going to be used before the Jury.

THE COURT: This is evidentally what the Government intends to use to prove the income tax evasion charges against Mr. McGrath.

MR. MEISELMAN: All right. I can't show you this one. Will someone turn it around?

MR. KAPLAN: It is going to rip if you move it.

THE COURT: All right, I will come down there. No problem.

MR. KAPLAN: Why don't we mark this?

THE COURT: This is John McGrath's interest statement.

MR. MEISELMAN: First of all, I object to the

size of the lettering on the top. Secondly, it is not a fact that it's John McGrath's bank interest. Some of the interest here is --

THE COURT: His wife.

MR. MEISELMAN: Alice, which is in trust for a daughter, and some of the interest here are time deposits.

Now, I think it's unfair to show this to the Jury.

In addition, it should be claimed by the Government, and not the way that they have it here. Here it appears as a fact.

THE COURT: What you can do is take the name, John McGrath, off. It's bank interest. Take off the name. Take a scissors and take off, John McGrath. Just put in bank interest.

MR. MEISELMAN: Can we put in the word, "Claimed"

MR. TEITLER: No.

THE COURT: No, not claimed. Bank interest. Because these are actual facts that the Government will prove.

MR. MEISELMAN: Would you do this?

THE COURT: Fold it over. Fold over, John McGrath, on this. It's, additional income. The name won't appear. But it won't be "Claimed." These are actual figures.

MR. MEISELMAN: Well, this is what the Government says is so. But it is not a fact yet.

THE COURT: It is not a fact yet, no.

MR. MEISELMAN: So what I would like to do is hold over this entire top or put it in lower block letters.

THE COURT: No. It's additional income.

MR. MEISELMAN: But the income from the towers is not a fact.

THE COURT: They have a right to show it.

MR. MEISELMAN: I don't doubt it. But the way they are showing --

THE COURT: It's going to say, income from towers. How else would the Jury understand it?

Just the name. Just the name. Just take that and fold the name over. Additional income. And this is income from the towers. That's the way it will stand.

MR. MEISELMAN: All right.

MR. TEITLER: Thank you, Your Honor.

THE COURT: All right. Take the name and fold it over, the John McGrath. And it's additional income.

MR. MEISELMAN: Now, the question is also, Your Honor --

THE COURT: Yes.

MR. MEISELMAN: As a practical matter, where am I supposed to be.

THE COURT: Well --

MR. KAPLAN: Right over here.

THE COURT: Give him a chair and a table to use. Put that table over here with a couple of chairs so that he and --

Your name is --

MR. McELROY: McElroy.

THE COURT: You are going to work with him. So they will have working space. But I think you should work -- Because it's going to come from this direction. I mean even if they come over here, you can be there and then you can see what they are doing. I can't see it unless I am over at the side.

Anything else, Mr. Meiselman?

MR. MEISELMAN: At the moment, no, sir.

THE COURT: All right.

(Continued on next page.)

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Well, your Honor, I intend to offer this chart in evidence based upon --

THE COURT: Wait a minute. Fold that back.

MR. KAPLAN: Back?

THE COURT: Yes. Fold it back.

MR. KAPLAN: All right.

MR. TEITLER: I will be offering these charts in evidence. And due to the fact that Mr. Meiselman has made all his objections, and just to avoid any delay in the trial, may he state if he has any objection to the --

MR. MEISELMAN: Yes, I have my objections. I have made them to his Honor.

If your Honor please, need I repeat them on the record again?

THE COURT: No.

MR. MEISELMAN: I do object to the black letters which I think are rather graphic.

THE COURT: Thos letters, the Court feels will help the jury to understand what the figures on the particular chart refer to and wha t they mean in connection with the Government's position on the income tax evasion in connection with this case.

MR. MEISELMAN: I understand your Honor's

position with respect to that. But what I was also objecting to was the black letters which are used -- which are so different from the rest of the chart that they stand out. They glare out at you.

THE COURT: Well --

MR. TEITLER: It is only --

THE COURT: The glaring that they give should be some basis for the jury to understand what the position of the Government is concerning the figures which are presented because the figures are more subdued. But they are all there.

MR. KAPLAN: Then we do not have to take this off? This is income from towers. There is no allegation that Alice McGrath --

THE COURT: No. Put the name John McGrath over, and just put in "income from towers." Turn the name back.

MR. MEISELMAN: Are there any other exhibits that the Government intends to introduce which I can examine now so I won't take up the time of the Court and the jury if it is --

MR. TEITLER: No, your Honor.

THE COURT: That's it.

MR. MEISELMAN: All right.

THE COURT: Thank you.

MR. MEISELMAN: Your Honor, before we move over, is this what is going to happen? Are we going to start with the witness so we can move right over?

THE COURT: I don't know. Anything else?

MR. TEITLER: No.

THE COURT: You are going to go right into this?

MR. TEITLER: Right.

THE COURT: Mr. Contarino is going to take the stand.

MR. TEITLER: Yes, your Honor.

THE COURT: Okay. Why don't we take the -- why don't we put all the charts in a line, in a way that you can -- that you will work with them one right after the other.

MR. TEITLER: This is the way I figured would be the best way.

THE COURT: Is that the best way that they are arranged now?

MR. TEITLER: Yes.

THE COURT: All right. Bring that around. Bring it around. Set up that table for Mr. Meiselman and Mr. McElroy. And bring a couple of chairs over for Mr. Meiselman. All right. So you can sit over

* * *

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Contarino - direct

Division of the Internal Revenue Service.

THE CLERK: One moment, Mr. Teitler.

One chart, bank interest, marked Government Exhibit 73 for identification.

One chart, additional income, marked Government Exhibit 74 for identification.

One chart, income from towers, marked Government Exhibit 75 for identification.

(Three charts marked Government's Exhibits 73, 74, and 75, respectively, for identification.)

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Q Will you tell the jury what your occupation is, sir?

A Yes. Special agent with the Intelligence Division of the Internal Revenue Service.

Q What is the nature of your duties?

A To investigate criminal violations of the Internal Revenue Code and related matters.

Q I don't believe the members of the jury could hear that. There was some movement at the table. Could you repeat it?

A We investigate criminal violations of the Internal Revenue Code or related matters.

Q How many years have you served as a special agent with the Internal Revenue Service?

* * *

(The Jury left the Courtroom.)

(A recess taken at this time.)

MR. MEISELMAN: Your Honor, we have gone to the Marshal's office and asked them to serve process on Mr. Taylor. He refused to accept it stating it is not their policy to serve subpoenaes on behalf of the defendants.

I cannot get out to Long Island today to get a process server --

THE COURT: How does it go, through the Clerk's Office?

THE CLERK: The Marshals won't serve it. The Clerk can't force the Marshal.

THE COURT: Order the Marshal to serve it.

MR. MEISELMAN: We are willing to pay the fees.

THE CLERK: You will have to endorse the subpoena.

THE COURT: All right.

MR. MEISELMAN: May I have a subpoena?

THE COURT: So ordered.

THE CLERK: Yes.

MR. MEISELMAN: Thank you very much.

THE COURT: Ready to proceed?

MR. MEISELMAN: Ready, Your Honor.

* * *

Mr. Meiselman of the Government's request to charge.

MR. MEISELMAN: Thank you. I will have it for the Court, I believe, this afternoon.

THE COURT: That will be perfectly all right. No problem.

Thank you very much.

MR. TEITLER: Your Honor may recall that the Government had moved under 16(b), as to the defense discovery material. To date the defense has failed to turn over anything to us. I believe at the time your Honor reserved decision on that particular issue, the Government would request that the Court rule on its request in view of the imminence of the defense case.

THE COURT: Yes, Mr. Meiselman?

MR. MEISELMAN: I have no objection, if I can -- at least I would do my best -- prior to the testimony of any one particular witness; that is the testimony of the defendant.

THE COURT: Of any witness or just the defendant?

MR. MEISELMAN: Just the defendant, to mark for identification those documents which I believe we will offer.

With respect to the other witnesses, I really

don't know what we're going to offer yet because of the vuluminous material that we may have. With most of our witnesses, your Honor, I don't think there will be any documentation.

With reference to one or two, they are the documents which have been subpoenaed by us, the Government is aware of what is in the Long Island State Parkway files. I've also subpoenaed the file, I believe, of Mr. Randolph Taylor. This is also here. I will show them, if they wish, the documents with respect to Mr. Taylor.

I'm going to try, your Honor, perhaps even avoid having Mr. Taylor here because I don't know whether I'll be able to get him, by bringing in an officer of the Long Island State Park Police which will testify to the records that the police have, to it. If you want that, we can turn over to you those papers we have with respect to that.

MR. TEITLER: Judge, I believe the rule and the case law, pursuant to the rule, provides that the Government is entitled to the same discovery that the defense is entitled to. OUr request to discovery is not limited to the papers that Mr. McGrath will testify to, but to any and all papers which might be produced during the defense case.

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MR. MEISELMAN: I just told Mr. Teitler, your Honor, that I am giving them the whole file for Long Island State Park Commission. I'll give them, if they wish, the entire file for Randolph Taylor. If there will be any documents for the witnesses and I trust that at this stage of the game when I'm so tired that I will offer through a witness, I will mark it for identification before the witness takes the stand.

THE COURT: And give the Government an opportunity to examine the documents?

MR. MEISELMAN: Yes. I would have ordinarily made copies, your Honor. I have no copying facilities here.

MR. TEITLER: Will these documents be marked, your Honor, prior to the witness actually being called by the defense on the witness stand to give us an opportunity to spend at least ten or fifteen minutes reviewing the documents?

MR. MEISELMAN: I have no objection.

THE COURT: Try to do it that way.

MR. MEISELMAN: I have no objection.

THE COURT: In that fashion.

MR. MEISELMAN: Frankly, I had objected to documents with respect to Mr. McGrath being shown to the prosecution so thatiit would not be used

in the prosecution. I think I was correct in that position, but once the prosecution's case is closed and we intend to offer documents concerning Mr. McGrath, I will mark those documents and give them an opportunity to look at it.

MR. TEITLER: In addition, your Honor, at the conclusion of the Government's case, we would request that this Court allow the prosecution to show an exhibit to the jury those documents already received in evidence which have not been shown to them.

THE COURT: I'll give you an opportunity.

(Continued on next page.)

MEISELMAN: We have at various times during the case shown documents to the jury. I think that it has taken up an awful lot of time of the Court and counsel. I don't see why they have to be shown to the jury at any particular stage.

THE COURT: There is no particular stage. If there are problems --

MR. MEISELMAN: Why aren't they shown at one time so they don't get the force of looking at one thing --

THE COURT: If we take one particular time and show them all the documents and take an hour or so to do that, that it may be a saving of time. I don't know.

MR. MEISELMAN: It's yet unanswered.

THE COURT: I'm sorry?

MR. MEISELMAN: Yet unanswered. They should look at documents and all the documents so there is a balance.

THE COURT: That is not required. If, at the end of the Government's case they wish to show the documents, I'll permit them. I see no reason not to.

MR. TEITLER: In addition, Judge,

Mr. Meiselman has indicated he subpoenaed various documents with respect to Mr. Taylor.

Under the rules, in essence, what he will probably attempt to do -- I can't state it with anymore certainty than he's stated it himself -- is attempt to introduce those records in an effort to impeach the credibility of the witness, Taylor, who --

THE COURT: He can give us an offer of proof of what you expect to prove through Mr. Taylor.

MR. MEISELMAN: Yes.

MR. TEITLER: Judge, under Rule 609 of the Federal Rules, the rule provides in paragraph A, when a particular -- what type of crime and the duration of that crime, when it can be used to impeach the credibility of a witness.

Clearly under Rule 609, since the crime that the witness talked about wasn't even a crime as Your Honor may rule -- it was a petty offense -- did not involve a felony conviction and secondly, did not involve a crime involving the honesty or dishonesty of the particular witness. Therefore, it seems that clearly since

the defense could not have used or impeached the witness by the type of crime or petty offense that we were talking about on the Government's case, it seems clear that it cannot do so on any defense case even if Mr. Taylor were recalled to the witness stand.

In addition, Judge, what the defense is attempting to do would be to use extrinsic evidence, in essence, to prove a collateral matter. That is what he would be doing if he introduced these documents.

THE COURT: Mr. Meiselman?

MR. MEISELMAN: Your Honor, I'm particularly referring to the fact not so much is a crime, but your Honor may recall --

THE COURT: One moment, sir.

(Pause)

THE COURT: Yes, sir.

MR. MEISELMAN: Your Honor may forgive me and perhaps this morning I'm not too articulate. I have difficulty speaking. I have a tooth infection which is somewhat stopping me.

I ask your Honor to recall the testimony of Mr. Randolph Taylor.

THE COURT: I recall it. He stated the

charge was dismissed and it was harassment.

MR. KAPLAN: Your Honor --

MR. MEISELMAN: Might I finish what I'm saying?

MR. KAPLAN: I read the transcript.

MR. MEISELMAN: Might I finish what I'm saying?

MR. KAPLAN: If I might advise the Court?

THE COURT: Yes.

MR. KAPLAN: I talked to Taylor before. The Court is getting the wrong impression of what happened.

MR. MEISELMAN: I'm asking what is on the witness stand.

MR. KAPLAN: Your Honor, --

MR. MEISELMAN: Might I finish my offer of proof?

MR. KAPLAN: If your Honor recalls the testimony --

THE COURT: Tell me what he said.

MR. KAPLAN: He said the charge of criminal mischief, what he was arrested for, was reduced for harassment, and was dismissed. Mr. Meiselman asked him what it was reduced to.

THE COURT: Charge of harassment was

dismissed?

MR. KAPLAN: Not the charge of harassment was dismissed. The criminal mischief charge was reduced to harassment and was dismissed. The harassment charge as your Honor -- I asked him was it a summons or a fine. He said a summons. He pled guilty to that harassment.

THE COURT: Did he so state it?

MR. KAPLAN: He didn't say he pled guilty.

THE COURT: That is his point.

MR. KAPLAN: It's somewhat unclear in the record. That is all I'm trying to say to the Court.

THE COURT: That is why it should have been clarified.

MR. MEISELMAN: In addition to that, your Honor, he testified that he was a police officer, moonlighting in the later part --

THE COURT: In addition to that, you brought out that he said he didn't leave under a cloud or with charges.

MR. MEISELMAN: Correct. He also testified he was a police officer on active duty who

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was moonlighting at Gullopo's in 1968. The fact of the matter is from the record I have in front of me, he had been suspended for the period 3, September, '68 to 2, January, '69.

THE COURT: Is this during the period that he was at Gullopo's?

MR. MEISELMAN: Yes.

THE COURT: Continue.

MR. MEISELMAN: In addition, I had no opportunity to -- oh, the question of harassment in which he stated that he had been harassed --

THE COURT: If you have found and if you can show proof that he pleaded guilty to harassment, the jury won't be advised, but we are not going to go behind what was done.

MR. MEISELMAN: Your Honor has misinterpreted what I have done. I'm not only speaking of the harassment charge.

THE COURT: You're speaking of the criminal mischief.

MR. MEISELMAN: Not of that either.

THE COURT: Yes?

MR. MEISELMAN: I'm speaking of the fact the witness testified he was harassed by the police immediately after he saw something. I

have the records in front of me. H was placed on several charges by the police department.

THE COURT: When was this?

MR. MEISELMAN: Before and after.

THE COURT: Before and after what?

MR. MEISELMAN: 1968 and 1969 -- 1968, pardon me.

THE COURT: What is before and after 1968 and '69 mean? I don't understand.

MR. MEISELMAN: Before the time he said he had seen Mr. McGrath allegedly receive --

THE COURT: What is before the charges?

MR. MEISELMAN: The charges are brought by the department against him. In each case, one of them included giving his own department --

THE COURT: I don't think you went into any before, so I'm not going to go into it. You can go into the time that he left the department, what his status was.

MR. MEISELMAN: I want to prove, if your Honor please, that he had been put on departmental charges.

THE COURT: Before?

MR. MEISELMAN: Might I finish what I'm saying?

THE COURT: Before? I'm not going into it.

MR. MEISELMAN: I want to offer --

THE COURT: I'll permit you to say he left under a cloud and he was under charges if you can prove it.

MR. MEISELMAN: Your Honor, --

THE COURT: As to the harassment, I will permit you to say he pleaded guilty to the harassment and that is it.

MR. MEISELMAN: Your Honor is misconstruing what I'm saying. I'm not talking about the harassment charge.

The witness stated --

THE COURT: What are you going to do about the harassment charge?

MR. MEISELMAN: I would like to show to the Court from the transcript of the record that he pleaded guilty to a lesser violation and acknowledged all the facts of it.

THE COURT: What?

MR. MEISELMAN: Acknowledged all the facts of the charge.

THE COURT: I'm not going to go behind what is in it, but I will permit you to show

proof that he pleaded guilty to the harassment.

MR. MEISELMAN: I also want to show, your Honor, that he was placed on charges in the department, on the same charges, and on others.

THE COURT: When?

MR. MEISELMAN: After 1968.

THE COURT: Are these the charges under which he left the department under a cloud?

MR. MEISELMAN: No.

THE COURT: I'm not going to go into it.

MR. MEISELMAN: He pleaded to that.

THE COURT: I'm not going into that.

I'll permit you to show he left under a cloud and there were charges against him at that time. I'll permit you to show that.

MR. MEISELMAN: It's intertwined, your Honor.

MR. TEITLER: Might I address the Court?

THE COURT: Yes, sir?

MR. TEITLER: I believe what Mr. Meiselman is trying to do, in addition to the impeachment, -- I believe the rule is clear this criminal mischief charge would not be covered and Mr. Meiselman is precluded by the rules --

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MR. MEISELMAN: I'm not talking about the criminal mischief charge.

MR. TEITLER: Might I continue?

MR. MEISELMAN: There's an attempt to confuse the issue. I'm not talking about the criminal mischief. In August of 1968, before he says he saw this thing and then he was harassed, he was already on charges for filing false and misleading information with his own department.

He pleaded, in his own departmental trial, guilty to those charges.

THE COURT: I will permit you to show that he was on charges at the time he left.

MR. MEISELMAN: No, no, at the time he says --

THE COURT: I'm not going to go back into an issue which wasn't taken up.

MR. MEISELMAN: Your Honor, I had no knowledge or information of this -- at the time the witness was on the stand --

THE COURT: The witness has not been completed. I'm not going to permit you to go back into the fact there were other charges.

MR. TEITLER: Might I proceed, Mr. Meiselman?

MR. MEISELMAN: Would Your Honor permit me to go into the fact the witness attempted to commit

suicide? 1657

THE COURT: Definitely not, definitely not.

MR. MEISELMAN: Would Your Honor permit me to go into the fact and I have records to substantiate it, that for the period September 3, 1968 to September 26, 1968, which is prior to the time he allegedly saw this envelope, he had been suspended on charges in the department to which he had pled guilty?

THE COURT: I'll permit you within the latitude of what I've told you.

Mr. Teitler?

MR. MEISELMAN: What is that again so I can --

THE COURT: One minute.

MR. TEITLER: Might I proceed, sir?

I want to call the Court's attention to Rule 608(b) of the Federal Rules which I believe is squarely in point on exactly what Mr. Meiselman is trying to do.

The Rule says, Judge, that specific instances of the conduct of a witness for the purpose of attacking or supporting his credibility other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence.

They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness

be inquired into on cross-examination of the witness concerning his character for truthfulness or untruthfulness or concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Under the Rule, Judge, it's clear that Mr. Meiselman's opportunity to inquire as to the specific acts of misconduct and whatnot, was his time to inquire, was the time of cross-examination and the Rule squarely holds that extrinsic evidence of any bad acts or specific acts of misconduct cannot be brought in by independent proof in the manner Mr. Meiselman is attempting to do it.

MR. MEISELMAN: I state to the Court that I had no knowledge of these facts at the time.

If I bring back Mr. Taylor would Your Honor allow me to go into them?

THE COURT: What I will permit you to do is to show his plea of guilty to a charge of harassment. That, I will permit you to do.

I will also permit you, because there is some problem as to just what the disposition is and this way the jury can know for itself what actually happened.

I will also permit you to show or to state before the jury that Mr. Taylor left the department under a cloud, period.

MR. MEISELMAN: Will you so permit me to state to the jury without bringing back Mr. Taylor?

THE COURT: You can do that if you wish.

MR. TEITLER: We object to that, Judge. We object to Mr. Meiselman --

THE COURT: He did say there are no charges pending provided he shows us there were charges pending.

MR. TEITLER: The evidence in the case will be in effect Mr. Meiselman's statement as to what happened. In the absence of the witness, the witness would not have --

THE COURT: Bring the witness in for those two items, then. Bring the witness in for those two specific items.

MR. TEITLER: If the Court please, might I beg the indulgence of the Court, would the Court allow the Government a few hours today to brief this issue and submit a memorandum to the Court?

THE COURT: You can do that.

MR. MEISELMAN: I have a witness who has come up from Florida. Tomorrow, I presume will be no Court,

I'm so informed.

THE COURT: There is no Court tomorrow.

MR. MEISELMAN: I would like to be able to put that witness on the stand today if I can.

THE COURT: What I might say, whatever documentation you may have, since at the end of the Government's case that documentation should be provided to the Government for the witnesses that you are going to present to the Court.

MR. MEISELMAN: Give me that again, Your Honor.

THE COURT: Any documentation you may have if it's voluminous should be presented to the Government at the end of it's case.

MR. MEISELMAN: I can show the Government all of Randolph Taylor's case.

THE COURT: They want to bring in Randolph Taylor for the purpose --

MR. MEISELMAN: The marshal is out with a subpoena.

THECOURT: They want you to bring him in to present the two items which the Court will permit.

MR. KAPLAN: Based on 608, it seems clear Mr. Meiselman, it would be improper for inquiry into this so-called suicide situation.

THE COURT: I'm not going to permit it.

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MR. KAPLAN: Or anything of that nature.

THE COURT: I'm not going to permit it.

MR. MEISELMAN: I'm not going into it. His Honor has told me not to, so I woun't.

THE COURT: You are to bring -- the Government wants you to bring him in. Bring him in and then you can set out the proof you wish to set out.

MR. KAPLAN: Under 608 charges in the department he would not be able to inquire into that.

THE COURT: For the truthfulness of the defendant's statement and so the jury can judge the truthfulness of what he may have said; I will permit it.

MR. KAPLAN: Only said that he wasn't under charges at the time he left.

THE COURT: At the time he left the department?

MR. KAPLAN: That is correct.

MR. MEISELMAN: I have here a letter from the administrative officer enclosing a copy of Mr. Taylor's resignation and stating, after enclosing the resignation, he says, "Effective close of business, July 7, '71, Mr. Taylor was suspended without pay on July 8, '71 pending a hearing on charges specified in out letter of July 4, '71. As Patrolman Taylor has resigned we do not plan any further action."

There were charges pending against him as of

July 4. Mr. Taylor resigned as of August 2, so that at the time he resigned there were charges pending against him.

THE COURT: Since Mr. Taylor had said, "no, there are no charges pending", perhaps you should bring someone in to testify to the fact that at that time charges were pending. That's all.

MR. KAPLAN: That's extrinsic evidence. He can only prove by cross-examining the witness. We are getting into collateral matters, trial on collateral matters at this point.

THE COURT: We are getting into collateral areas.

What we'll do then, we'll bring Mr. Taylor in and Mr. Meiselman can inquire.

MR. MEISELMAN: Might I put some of this in the records concerning his resignation and the fact that he was under charges, through an officer of the Commission?

THE COURT: I'm not permitting extrinsic evidence in this particular case because there's a fact you are bound by his answer.

MR. MEISELMAN: It's unfortunate this came to light afterwards.

MR. KAPLAN: Only came to light because you

had his name months ago.

MR. MEISELMAN: I didn't know what he was going to do or who he was.

MR. KAPLAN: You should have investigated.

MR. MEISELMAN: We don't have the staff the United States Attorney has to investigate witnesses we don't know about.

MR. TEITLER: Mr. Meiselman has a bigger staff than the United States Attorney working this case.

MR. MEISELMAN: You make wild statements and usually I'm permitting to forget it. As a matter of law His Honor will take judicial notice of the fact I have not. If he will not I state to you that I do not.

MR. TEITLER: We have only had three working on this case.

MR. MEISELMAN: I'm a lawyer from the boondocks in Mineola and I don't have your staff.

THE COURT: This is a matter of personal differences.

MR. MEISELMAN: What kind of nonsense, that I have the same staff they have? Do I have special agents running out all over the place.

MR. TEITLER: There were three lawyers working on this case --

MR. MEISELMAN: There were not three lawyers working on the case. There was myself working on this case. Mr. Vaccaro is not even admitted in this Court. He's a young man who has come to our office. Mr. McElroy was not working on this. As you saw, Mr. McElroy was not here during the major portion of this trial.

THE COURT: No, he hasn't.

MR. MEISELMAN: I have been working on this case. I think that's an unfair statement from Mr. Teitler and I think -- well, I would rather not make any comment.

THE COURT: Are we ready to proceed?

MR. KAPLAN: Yes.

Can we see the records for our purposes, Mr. Meiselman, the Taylor records?

MR. MEISELMAN: I ask, sir, you keep them in the order which they are. I will take some of my notes, if you please.

MR. KAPLAN: Thank you.

We are ready.

THE COURT: Shall we proceed, Mr. Meiselman?

MR. MEISELAMN: What should I do with these records?

THE COURT: Do you want to see these records

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now or later? 1665

MR. KAPLAN: We'll see them later.

THE COURT: We'll proceed with Mr. Contarino. Bring in the jury please.

(jury enters the courtroom)

S A L V A T O R E C O N T A R I N O , called as a witness having been previously duly sworn by the Clerk of the Court, testified as follows:

THE COURT: Good morning, ladies and gentlemen. After the jury was in the -- all the members of the jury were in the jury room, there were some legal issues concerning this case which came up and the Court had a discussion with the attorneys on those issues, but we are ready to proceed on the continuance of the cross-examination of Mr. Contarino.

Mr. Meiselman, you may proceed.

MR. MEISELMAN: No further questions, Your Honor

MR. KAPLAN: Redirect, Your Honor.

THE COURT: Yes, redirect examination.

REDIRECT EXAMINATION

BY MR. KAPLAN:

Q Mr. Contarino, I just have a few questions of you. There was a question, if you recall, put to you on Friday by Mr. Meiselman concerning time deposit accounts or time accounts.

* * *

Q Can you tell us, sir, where your office was?

A 300 Sunrise Highway, West Babylon, New York.

Q Approximately how many years did you practice law before you went to Florida?

A 25 years.

Q Did there come a time, Mr. Blottner, when you attended a certain meeting at the Holiday Inn Motel in Riverhead in May of 1975?

A Yes, sir. I'm not quite certain of the date, but it was approximately May of '75. I attended a meeting at the Holiday Inn out near Riverhead, yes, sir.

Q How did you get to that meeting, sir?

A In an automobile driven by, I believe, Mr. Rivasio or Mr. Russo. I'm not quite certain who did the driving.

Q Can you tell us who was present in that car?

A Mr. Rivasio, Mr. Russo, Sam Russo I think the name is, Eugene Rivasio, another gentleman's name I don't recall.

Q This gentleman, Russo, is the Russo who

at that time was operating Russo's Garage or something like that?

A Body shop, auto-body repair, something to that nature, trucker. I'm not quite certain of the phrase.

Q While driving out to Riverhead, was there any discussion in the car between any of the parties, and without telling me what anybody said yet, concerning Mr. McGrath and concerning payments of money?

A Yes, sir.

Q Without stating what anybody else said except Mr. Russo, would you please state what Mr. Russo said?

MR. KAPLAN: I'm going to object at this point, your Honor. I ask for a side bar.

THE COURT: Sustained. Don't answer that question.

THE WITNESS: Yes, your Honor.

MR. MEISELMAN: Might I have a side bar, your Honor?

THE COURT: Surely.

(Side bar)

THE COURT: First I'll hear from Mr. Kaplan.

MR. KAPLAN: Judge, the only way he could ask this witness what Russo said, is if Russo was asked that question on cross-examination and said a certain thing as to what he said. Now he's impeaching him.

MR. MEISELMAN: That is what I'm doing.

MR. KAPLAN: He never said it. Russo never testified to it.

MR. MEISELMAN: I'm not saying about the way he said it on cross, but he did testify he paid money. His testimony will be that he didn't.

MR. KAPLAN: No, you cannot impeach a witness' character really by asking him what he said unless you establish through that witness that he denied what he said the previous time. There is no question what happened in the car.

THE COURT: In other words, you're saying we must confine it to the meeting itself.

MR. KAPLAN: That's right, because nothing was testified in the car previously. If Mr. Russo had tesified in the car previously and said something then this witness could rebut that testimony, but the fact of the

matter --

MR. MEISELMAN: Under Section 400 -- I don't know the number, your Honor.

MR. KAPLAN: No testimony as to what Mr. Russo --

MR. MEISELMAN: I want to show motive, plan, preparation of the witness.

MR. KAPLAN: That is a similar act.

MR. MEISELMAN: This is a witness in chief that we are talking about now. He said on his direct testimony that he paid money to Mr. McGrath. I'm now going to show that he stated that he did not.

This is to show that what he testified here was a recent fabrication. Only the same basis that what Mr. Kaplan asked for and in asking for the recent fabrication testimony of the witness, just the reverse. If he had a right to do it with his own witness, I certainl have a right to do it with that witness.

MR. TEITLER: Judge, in addition to Mr. Meiselman's citing Rule 404 which deals w prior similar acts rather than the proper position --

MR. MEISELMAN: Might I get the rules?

THE COURT: Yes.

MR. MEISELMAN: Here it is (Indicating). 404B; your Honor.

MR. TEITLER: We submit 404B is totally in opposite of the situation here, prior similar act has nothing to do with it.

MR. MEISELMAN: The fact that all I want to do is less than what the prosecution was allowed to do. If they could show testimony that it wasn't recent fabrication, I think I can show testimony that it was.

MR. KAPLAN: How can you show it was recent fabrication?

MR. MEISELMAN: The man testified way before anything else that he didn't pay any money to Mr. McGrath.

MR. KAPLAN: That is what he testified in the Grand Jury, fine.

MR. MEISELMAN: Before that.

THE COURT: He wants to show before that.

MR. MEISELMAN: When was the Grand Jury?

MR. KAPLAN: It was after that.

MR. MEISELMAN: Prior declarations of the

witness in chief to show motive, plan, preparation. This is to combat their testimony.

MR. KAPLAN: Prior similar acts.

MR. MEISELMAN: The same act.

THE COURT: He means the same act.

MR. MEISELMAN: He's talking about the same act.

THE COURT: Mr. Meiselman, I'm going to deny the request you make for this particular situation. I will permit you to confide this testimony as to the meeting at the Holiday Inn as to what this witness said at that point.

MR. MEISELMAN: Anything what they said about the Holiday Inn and on the way there?

THE COURT: I don't know whether there is or not. At this point, I will not permit you to use it.

MR. MEISELMAN: Very well.

THE COURT: Rule 404 as to this purpose.

(Open Court)

(Continued next page)

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Q Mr. Blottner, did there come a time when you got to the Holiday Inn?

A Yes, sir.

Q After you arrived at the Holiday Inn in Riverhead, did there come a time when you entered a room in the Holiday Inn, a conference room?

A Yes, sir, on two occasions. Just to be absolutely accurate, sir.

Q On the first occasion -- by the way, how long apart were these occasions?

A Oh, I'd say anywhere from five to fifteen minutes between the time I first entered, went out and then went back again. I don't remember specifically. I would have to leave it five to fifteen minutes.

Q On the first occasion that you entered the conference room, who was present?

A To the best of my recollection, there were two people as I faced into the room. I didn't go all the way into the room. There appeared to be two people seated to the right of the room at a long table, seated to the right.

Q You recognized them?

A I didn't at that time.

Q And did you find out later who they were?

A Yes, sir, I believe they were the same people

unless there was a switch which I hardly think likely.

Q Who were these people?

MR. KAPLAN: I object if he believes it was the same people or he doesn't know.

THE COURT: I'll sustain it.

Q Did you have any conversation with these people?

MR. KAPLAN: Object.

Q Don't tell me what was said.

THE COURT: I'll permit the question and answer. Did you have a conversation?

THE WITNESS: No.

Q Then you left the room?

A Yes, sir.

Q Did there come a time when you reentered the room?

A Yes, sir.

Q After reentering the room, was there a general conference or discussion?

A Yes, sir.

Q Can you tell me without telling me who said what, who was present in that room to your knowledge?

A There was a Mr. Gobel. He was the attorney. I knew him to be the attorney for Mr. Ancona. There was Mr. Ancona, my client, Mr. Ravasio, Mr. Russo, a gentleman

whose name I don't know was with me in the car, identified himself as an associate of Mr. Russo's, Mr. Ralph Signoriello, the gentlemen I knew to be the owner of Alray and another gentleman who somehow indicated association with Alray or with Mr. Signoriello whose name again I don't know.

Q Without telling us what was said, did Mr. Gobel then make a statement at the meeting?

A Yes, sir.

Q Where at that time was Mr. Gobel sitting -- was there a table in the room?

A Yes, sir.

Q Where was Mr. Gobel sitting in relation to the other people at that table?

A I can give you the outlay as I remember it. I'm quite sure it's correct.

Q Please.

Q The table sort of went the length of the room. The room was as you looked into it was longer than it was wide. The table covered most of the room. Mr. Gobel was sitting at what might be termed the head of the table as you looked into it. He would have been at the head of the table. Immediately to his right and as I entered and sat down to my left was Mr. Ancona. Seated almost alongside of Mr. Ancona was Mr. Ravasio. Seated alongside Mr. Ravasio was myself.

On the lefthand side of Mr. Gobel and righthand side of the table as you looked in, Mr. Russo and the gentleman who was Mr. Russo's associate; farther down as you came to the point where you entered was Mr. Ralph Signoriello, and next to him was this other gentlm an whose name I do not know.

Q After Mr. Gobel made a statement you just referred to, were there any statements made by either Mr. Ancona, Mr. Russo, Mr. LaGuardia or Mr. Signoriello?

A If I may, Mr.Meiselman, I couldn't actually describe it as a statement. It was Mr. Gobel who sort of was leading the meeting. As he was talking, various commentaries were being made by the various parties in the room, including myself.

Q What if anything did you hear -- from Mr. Ancona, Mr. Russo, Mr. LaGuardia or Mr. Signoriello say to the best of your recollection, what did they say?

A I can only say as Mr. Meiselman -- I'm sorry, as Mr. Gobel started to talk, Mr. Ancona was sort of nodding his head and either verbally, in some instances, in some instances merely by shaking the head "Yes", assenting to what Mr. Gobel was saying.

MR. KAPLAN: I'm going to object.

THE WITNESS: I'm sorry?

THE COURT: I'll sustain it.

MR. KAPLAN: What was Mr. Gobel saying?

THE WITNESS: I have to get it in order.

MR. KAPLAN: We have --

THE COURT: These people, not Mr. Gobel, but by these people, either of these four.

MR. KAPLAN: We have no objection to Mr. Gobel's statements.

THE COURT: You want Mr. Gobel's statements?

MR. KAPLAN: If he wants to testify to it, we have no objection.

THE COURT: You can testify to it. What Mr. Gobel said and what each of these gentlemen said.

THE WITNESS: All right, sir.

Mr.Gobel started the conversation with the indication --

MR. KAPLAN: I'm going to object to any indication as to what was said exactly.

THE WITNESS: Sir, when I say indication, Judge, I'm trying to say that's what he said.

THE COURT: Tell us what he said, not an indication, just what he said.

THE WITNESS: I don't remember the exact words.

Q To the best of your recollection.

A However, Mr. Gobel said that he and Mr. Ancona

had already visited the United States Attorney's Office; that they had spoken to the gentleman who was the prosecuting attorney in connection with the matter. I don't remember whether they identified the particular name. I think they did.

Again, as Mr. Gobel was saying this, Mr. Ancona was in some instances nodded his head and other instances said, "That's right, we saw." And names the prosecuting attorney. Frankly, I didn't hear Mr. Ancona -- he said the name, but I couldn't make it out as he had said it the first time.

Mr. Gobel continued to say that after visiting with the U.S. Attorney he had, he believed, been able to get some indication that some form of immunity might be offered Mr. Ancona. He spoke of the type of immunity he was going to be able to get for Mr. Ancona. He indicated; however -- I forgot whether he used the word "transactional immunity, use immunity".

MR. KAPLAN: I object, exactly what was said.

THE WITNESS: Exactly, I don't know.

THE COURT: Did you make any notes.

THE WITNESS: No, sir.

THE COURT: This is all from memory.

THE WITNESS: All from memory, sir.

THE COURT: I see.

THE WITNESS: Never made a single note on it.

THE COURT: You were representing a client there?

THE WITNESS: Yes sir, I was, a friend of Mr. Ravasio for many years. I was just about retired. I knew I wouldn't represent him in the actual trial, but he asked me to come along and I did, sir.

THE COURT: You were along just to assist him at this time?

THE WITNESS: Yes, sir.

THE COURT: At the particular time?

THE WITNESS: Yes sir, essentially.

THE COURT: Were you there in the capacity of an attorney?

THE WITNESS: Well, Mr. Ravasio knew me as an attorney.

THE COURT: I'm asking you, were you there in the capacity --

THE WITNESS: I would say yes, yes sir.

THE COURT: Did you thereafter do anything further for Mr. Ravasio?

THEWITNESS: Yes.

THE COURT: Did you go to any meetings --

THE WITNESS: I went --

MR. MEISELMAN: Object, your Honor.

THE COURT: You see, he's saying he was there

for an accommodation. If this is a continuing representation, it becomes a little more than an accommodation. It's a little more of a responsibility on his part as to his representation.

MR. MEISELMAN: I'll withdraw it.

THE COURT: If he says it's an accommodation, it's an accommodation. If that was the end of it, then it's an accommodation.

Q Will you please continue.

A Yes sir. I did on one occasion go with Mr. Ravasio when he testified before the Grand Jury.

THE COURT: The only reason I ask --

THE WITNESS: I understand --

THE COURT: -- not to in any way create any bad impression, but if there is a continuation of representation, then you were his attorney.

THE WITNESS: That's why --

THE COURT: It was probably at that meeting that you were his attorney?

THE WITNESS: I would say I was his attorney.

THE COURT: It seems that way to me. I don't know whether it's so or not.

THE WITNESS: Very good, your Honor, thank you, sir.

Q After Mr. Gobel made this opening statement, could you tell us now sir what was said by Mr. Ancona, Mr. Russo, Mr. LaGuardia, Mr. Signoriello?

A Yes sir. Mr. Russo at sometime during this entire conversation or statement, as you will call it, while Mr. Gobel was talking, Mr. Russo kept interjecting "I don't have any reason to do anything. I don't have any reason to try to work with anybody. I have no reason. I did nothing wrong" or words to that effect.

Mr. Ravasio, likewise, indicated that he had no reason to join in what Mr. Gobel was requesting and Mr. ANcona, assenting and they protested their innocence, both of them; that is Russo and Mr. Ravasio.

Mr. --

THE COURT: I'm sorry, you represented Mr. Ravasio?

THE WITNESS: Yes, sir.

THE COURT: Continue.

A (Continuing) He protested his innocence at that time, sir.

Mr. Signoriello said "I don't want to say anything", or words to that effect. "I've got nothing to say."

Mr. Gobel continued that it would be best if we worked together, if we got the story straight, if we get

everything solidified and he thought by virtue of that means, we could get a better deal from the District Attorney -- U.S. Attorney's office.

I have to note that for that five or ten minutes I spoke to Mr. Gobel alone --

MR. KAPLAN: I'm going to object to what happened alone, your Honor.

A (Continuing) I don't know how to say it --

THE COURT: Listen, it's part of what was done. Everything is there. That's what happened.

THE WITNESS: That's what I'm trying to say. It was all part of the one thing, in my mind --

MR. KAPLAN: I'm going to object to what was in his mind, only what was said at the meeting.

THE COURT: Let him talk.

THE WITNESS: I'm sorry.

THE COURT: That's perfectly all right.

THE WITNESS: I didn't mean it.

MR. MEISELMAN: Might he testify, your Honor, as to what Mr. Gobel said?

THE COURT: What's the Government's position?

MR. KAPLAN: Not if the others weren't present. A conversation between him and Gobel is strictly hearsay. As long as it was at the meeting with the other towers,

we have no objection.

THE COURT: I'll permit you to testify to everything that took place at the meeting at that point, whatever was said between you and the rest of the parties in the meeting.

A (Continuing) I said to the group, in general and more particularly to Mr. Ravasio, during the conversation, during what Mr. Gobel said, I said to Mr. Ravasio, "We belong here. I don't think -- this isn't going right."

MR. KAPLAN: I'm going to object to what he said. It's what the others said.

THE WITNESS: I'm sorry.

MR. KAPLAN: What he said has no relevancy.

THE COURT: That's his position. I'll allow it.

A (Continuing) And the conversation continued. Mr. Gobel kept reiterating that he thought if we worked together that we could get a better deal and then Mr. Ancona sort of piped in and I don't know whether he was speaking directly because at that point I was looking at Mr. Gobel. I heard Mr. Ancona, to my left, say something to the effect, "Well, I think if we work together to get out stories straight, we can get a better deal," and at that point I said to Mr. Ravasio,"I don't like this entire setup. Let's get the hell out of here."

I don't want to say anything I'm not supposed to, but I had reason --

MR. KAPLAN: I'm going to object to anything --

THE WITNESS: For the reason for my remarks, your Honor.

THE COURT: Your thoughts are different at this point, very good.

Q Then you left the room with Mr. Ravasio and Mr. Russo and this other gentleman whose name you don't remember?

A I didn't leave with them. Ravasio, I believe, followed me out and I think shortly thereafter, because I must admit emotionally I was upset --

MR. KAPLAN: I object.

THE COURT: You were upset?

THE WITNESS: Yes, sir.

THE COURT: Were you involved?

THE WITNESS: No, sir.

MR. KAPLAN: I'm going to object.

THE WITNESS: Other than Mr. Ravasio --

THE COURT: Emotionally you were upset?

THE WITNESS: Yes sir.

THE COURT: I see. Continue.

Q Did you then leave the room?

A Yes sir, I was about to say I don't know who followed me particularly, because I went upstairs rather quickly, that's all.

Q Did you shortly thereafter leave the premises?

A Yes.

Q All together?

A Yes, sir.

MR. MEISELMAN: You may examine.

(Continued next page.)

* * *

Mr. Meiselman.

MR. MEISELMAN: We're calling Lieutenant Cosgrove.

MR. KAPLAN: I object and call for a sidebar at this point, your Honor.

(Sidebar discussion out of the hearing of the Jury.)

THE COURT: Give us an offer of proof.

MR. MEISELMAN: This is what we discussed this morning. He's going to testify as to the records --

MR. KAPLAN: The judge ruled against you.

THE COURT: Let him state what he wishes to state.

MR. MEISELMAN: During recess we made inquiry in the U.S. Marshal's office and the subpoena against Mr. Taylor hasen't been served.

It's on the street. I'm going to have Lt. Cosgrove testify from the records of the commission the fact that Mr. Taylor was under charges when he resigned and the record of the commission with respect to the charge that was reduced --

MR.KAPLAN: That's exactly what I prohibited him to do.

THE COURT: No, you coudln't do that. You may

Mr. Taylor will have to come back and testify an extrinsic evidence will not be received as to this --

MR. MEISELMAN: I thought you were going to limit me to that.

THE COURT: To Mr. Taylor.

MR.MEISELMAN: I only have one other witness, your Honor, and after that I'm not prepared to proceed today, and this is Mr. William Roberts of the commission.

THE COURT: All right, surely.

MR. MEISELMAN: Your Honor, before luncheon recess I gave the U.S. Attorneys office all the papers I had with respect to Cosgrove's testimony and Mr. Taylor.

THE COURT: They are to be returned.

MR. MEISELMAN: They refused to return them.

MR. KAPLAN: We haven't read them yet.

THE COURT: Return them immediately.

MR. KAPLAN: We didn't read them.

THE COURT: Return them immediately.

MR. KAPLAN: He's -- if he's going to question Mr. Taylor --

THE COURT: Return them immediately.

MR. KAPLAN: We'd like to -- we'll look at

them another time.

THE COURT: Return the papers to him.

MR. MEISELMAN: Your Honor, also, the other day I asked the US. Attorneys office to produce the folder of complaints against Gullo's Garage. May I ask them to produce them again.

THE COURT: Yes, produce them. Return the papers to him, now.

MR. MEISELMAN: The defense calls Mr. Robbins to the stand, your Honor.

W I L L I A M R O B B I N S, residing at 2378 Beverly Road, Wantagh, New York, having been called as a witness was duly sworn by the Clerk of the Court, and testified as follows:

DIRECT EXAMINATION

BY MR. MEISELMAN:

Q Will you be good enough -- withdrawn.

Are you presently now associated and have you for some time been associated with the Long Island State Park Recreation Commission?

A Yes.

Q Prior to that association were you associated with the Long Island State Park Commission?

A Correct.

Q What is your present title with the Long Island

* * *

in Albany and the members of the various regional commissions were reduced to advisory status.

Q When it was the Long Island State Park Commission, you were responsible to the general manager; is that correct?

A That's correct.

Q And the general manager, was in turn responsible to the commissions?

A That's correct.

Q When it became the Long Island Park --

MR. KAPLAN: I object. He's testifying for the witness.

THE COURT: It's leading, but you're not supposed to lead.

Q When it became the Long Island State Parks & Recreation Commission, to whom were you responsible and to whom were the Commissioners responsible?

A When it became the Long Island Park & Recreation Commission?

Q Yes.

A I was still responsible to the general manager. He was responsible to the Commissioner in Albany.

Q Prior to that time, when it was the State Park Commission, who was the general manager responsible to?

A The general manager then was responsible to the

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this witness. 1978

THE COURT: Thank you.

You are excused.

THE WITNESS: Thank you, your Honor.

THE COURT: Yes?

MR. MEISELMAN: We call Mr. Miller to the stand.

Your Honor, I believe that the next few witnesses may be short. May I have them standing in the outside hall?

THE COURT: Surely.

THE CLERK: Up here.

Will you raise your right hand?

G E O R G E A. M I L L E R , called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. MEISELMAN:

THE COURT: Proceed.

Q Mr. Miller, what is your present employment?

A I work for the Long Island State Park.

Q How long have you been associated with the Park Commission or the Long Island State Park and Recreation Commission and/or Jones Beach State Parkway Authority?

A Since March of 1953.

Q Do you know John McGrath?

A I do.

Q How long have you known him, sir?

A Since March of 1953.

Q During that period of time, are you familiar, until now, are you familiar with Mr. McGrath's reputation for truthfulness and honesty?

A I am familiar with John McGrath as a man of good integrity, of fine integrity.

MR. KAPLAN: I object, your Honor. He's not answering the question.

THE COURT: I'll permit it.

Q And with respect to his truthfulness and for his veracity, what is his reputation with respect to that?

A As far as I know, John McGrath is as truthful as any man Ive known.

Q I ask you, sir, whether you have formed an opinion of your own with respect to his truthfulness and his honesty? Have you?

A Yes, I have.

Q What is your opinion?

A My opinion is that John McGrath is truthful and trustworthy, as far as I know.

MR. MEISELMAN: Thank you, sir.

You may examine.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. KAPLAN:

Q You say, Mr. Miller, as far as you know.

Are there certain facts which you might become aware of that might change your opinion as far as Mr. McGrath's reputation for truthfulness and honesty, certain facts that you are not aware of personally?

MR. MEISELMAN: If those facts are in existence.

THE COURT: If such facts are in existence?

MR. MEISELMAN: Yes.

Q Do you understand the question, sir?

A Well, at one time I used to think Mr. Nixon was the greatest guy in the world.

Q I don't think you're answering the question. I'm asking you this question:

If it was proven to your satisfaction that Mr. McGrath had lied on his tax returns and had committed extortion, if those facts were proven to your satisfaction, might that change your opinion?

MR. MEISELMAN: Objection.

A Not at the present time, no.

Q Even if those facts --

* * *

MR. MEISELMAN: Thank you.

THE COURT: All right. Thank you, you are excused.

You want to ask him any further questions?

MR. KAPLAN: No questions, your Honor.

THE COURT: Thank you, Mr. Miller.

(Witness excused.)

THE CLERK: Will you raise your right hand, sir?

T H O M A S L. G A N N O N, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

xxxx DIRECT EXAMINATION

BY MR. MEISELMAN:

Q Mr. Gannon, do you know John McGrath?

A I do.

Q Approximately how long have you known him?

A Give or take, a little over 10 years.

Q Now, was there a time, sir, when you were a Director of Sanitation for the Township of Huntingon in Suffolk County?

A Would you repeat that? I couldn'thear you.

Q When you were a Director of Sanitation for the Township of Huntington in Suffolk County.

A Yes. When was it?

Q No. Were you?

A Well, that was at the end of our relationship, a couple of years ago. I had a much longer --

Q No. Did you hold such a position?

A Yes, yes.

Q Did you also hold a position of Superintendent of Road Maintenance for the County of Nassau?

A Yes.

Q Approximately how many years did you hold those positions?

A A little over seven and a half years.

Q In such positions, did you have occasion to meet with Mr. McGrath with respect to common work or problems?

A Yes.

Q And have you gotten to know Mr. McGrath over those periods of years until now?

A Yes, I have.

Q Are you familiar with Mr. John McGrath's reputation for truthfulness and honesty in the community?

A As far as I know, John McGrath is an honorable, truthful man, yes.

Q That is your opinion?

A My opinion, yes.

MR. MEISELMAN: You may examine, sir.

THE COURT: Cross-examination.

MR. KAPLAN: No questions. Thank you.

THE COURT: You are excused. Thank you.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Yes, sir, Mr. Meiselman.

MR. MEISELMAN: Yes, your Honor.

THE CLERK: Will you raise your right hand, sir?

T H O M A S K E N N E D Y , called as a witness, having been first duly sworn by the Clerk of the Court, stated his address as 246 Lewis Avenue, Westbury, testified as follows:

XXX DIRECT EXAMINATION

BY MR. MEISELMAN:

Q Mr. Kennedy, what do you now do?

A I'm superintendent of Public Works for the incorporated Village of Westbury.

Q That is in Nassau County, New York?

A Yes, sir.

Q How long have you held that position?

A Thirty years.

Q In the course of those 30 years, have you

had occasion, in the course, of your duties, to meet with Mr. McGrath, both in the course of your duties and socially?

A Yes, quite often.

Q How long do wyou know Mr. McGrath?

A About 21 years.

Q During all the period of time that you know him, can you tell us what Mr. McGrath's reputation is for honesty and truthfulness?

A I don't think I could explain how honest he is. He's just -- he's just great, as far as a trustwo thy, honest person.

For an unelected official, they don't come no higher than him.

Q That is your opinion?

A Yes, sir.

MR. MEISELMAN: Thank you. You may inqure.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. KAPLAN:

Q Mr. Kennedy, sir, you're a personal friend of the defendant's?

A Yes. sir.

Q And you're fond of him, I take it?

A I didn't hear you.

* * *

THE CLERK: Will you raise your right hand, sir?

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P E T E R P. C A R T E R, called as a witness having first been duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. MEISELMAN:

Q Mr. Carter, until December 31, 1975, did you hold the post of director of education for the Nassau County Department of Drug and Alcohol Addiction?

A Yes, sir.

Q How long did you hold that post?

A Five years.

Q Prior to that time, had you been executive assistant to t e district principal of Central Highschool District Number Two?

A Yes, sir.

Q And did you hold similar positions, either as director -- as director or coach for Garden City, for York, Pennsylvania, and so on?

A Yes.

Q Prior years?

A Yes.

Q Were you also assistant professor of

physical education at the University of Buffalo?

A Yes, sir.

Q Are you an associate member of the International Narcotic Law Enforcement --

MR. KAPLAN: I object, your Honor. He's qualifying this man as an expert.

MR. MEISELMAN: No.

MR. KAPLAN: He's supposed to ask his knowledge with respect to the defendant.

THE COURT: Objection is overruled. I'll permit it.

Q Are you a member, sir, of the International Law Enforcement Officers Association?

A Yes, sir.

Q Did you receive any distinguished service awards?

MR. KAPLAN: I object, your Honor, and ask for a side bar at this point.

THE COURT: I'll sustain the objection. I think you're --

Q Since you have retired in December of 19 -- December 31, of '75, have you been called back to employment?

A Yes, parttime college teaching.

Q ...ld you state where and what you do there?

A Saint Joseph's College, Brentwood, New York. I'm a teacher of health education.

Q Mr. Carter, how long have you known Mr. McGrath?

A Approximately 45 years.

Q Will you please state to the jury when you first met him, under what conditions?

A Yes, sir.

MR. KAPLAN: I object as to when he first met him. Just his reputation.

THE COURT: That is sustained.

Q Did you recently work for Mr. McGrath?

MR. KAPLAN: Objection, your Honor?

MR. MKISELMAN: I'm trying to show the reputation.

MR. KAPLAN: Pre...ent --

THE COURT: I'll permit that. Did you work for Mr. McGrath?

THE WITNESS: He was my immediate supervisor at Jones Beach State Park, the summer of 1930.

Q The summer of 1930?

A Yes.

Q What were you doing there that summer?

A I was a lifeguard.

Q And have you known Mr. McGrath since then?

A Yes, sir.

Q Since 1930 to now, do you know Mr. McGrath's reputation in the community for truthfulness and veracity

A Yes, sir.

Q What is that, sir?

A I regard Mr. McGrath as a man of integrity and a man of high character.

Q And for truthfulness and veracity?

A Yes, sir.

MR. MEISELMAN: You may examine.

MR. KAPLAN: No cross-examination, your Honor. Thank you for coming, Mr. Carter.

THE COURT: Thank you. You are excused, Mr. Carter.

MR. MEISELMAN: Your Honor, I did not anticipate no cross-examination and I have no further witnesses available until the first thing tomorrow morning.

THE COURT: All right. Ladies and gentlemen, we are going to adjourn for the day. The

* * *

(The jury is in the jury box.)

THE COURT: Good morning, ladies and gentlemen. This morning there was a lengthy legal argument before the Court concerning one of the issues in the case. And after the argument I had to take it under consideration and to look into the particular issue. It's because of this you are late in coming into the courtroom, but we will proceed at this time.

Mr. Meiselman.

MR. MEISELMAN: Thank you, sir.

The defense calls Mr. Edward Gunnigle.

E D W A R D J . G U N N I G L E , a witness called herein, was sworn by the Clerk of the Court and testified as follows:

DIRECT EXAMINATION

BY MR. MEISELMAN:

Q Mr. Gunnigle, do you know John McGrath, sitting here (Indicating)?

A Yes, I do.

Q When did you first meet Mr. McGrath?

A 1937.

Q In what capacity were you in and in what capacity was he?

A While going to St. John's I applied for a summer job with the Long Island State Park Commission. I was

called down and had aninterview and assigned a position working under Mr. John McGrath.

Q Doing what?

A Picking up papers, sweeping the bath house floors, general maintencance of the bath house at Jones Beach.

I worked there again the following summer under Mr. McGrath and for the two following summers after that.

I became assistant manager, assistant to Mr. McGrath.

Q Of the bath house?

A That's right.

Q Briefly, Mr. Gunnigle, could you give us some of your background and what you've done?

A Following graduation from St. John's Law School --

MR. KAPLAN: I object to the background. What is he now?

THE COURT: Sustained.

Q Mr. Gunnigle, are you an attorney?

A Yes, I am.

Q There came a time when you were associated with a bank?

A That's right.

Q Which bank?

A Tinker National Bank in Setaucket, Long Island.

Q In what capacity?

A 1960 I was Executive Vice yresident, and a year later President.

Q Thereafter, the Tinker National Bank merged with --

MR. KAPLAN: I object at this point. This has no relevancy.

THE COURT: Sustained.

Q Thereafter, what position did you attain?

MR. KAPLAN: I object.

MR. MEISELMAN: Your Honor, I am trying to show who the man is in the community.

THE COURT: He can tell us what he is.

A In 1969, Marine Midland --

THE COURT: Tell us what you are today.

THE WITNESS: Today, I am senior partner in the law firm of Gunnigle, Johnson, Hilkreth, Owens and Dinunzio out in Port Jefferson. I am also president and executive director of the Stony Brrok Foundation State University, vice-chairman of the Oysterman's Bank and Trust Company --

THE COURT: I object to this as irrelevant.

MR. KAPLAN: I object to this.

THE COURT: He wants to give you a speech. I will let him. Go right ahead.

Q Mr. Gunnigle, are you associated with the Oysterman's Bank?

A Yes, vice-chairman of the board.

Q Go ahead. Are you associated with the St. John's Roman Catholic Church?

A Yes, as a trustee.

Q Are you associated in any way with St. Charles Hospital?

MR. KAPLAN: I object.

THE COURT: Let him go.

A I am presently the president of St. Charles Hospital in Port Jefferson.

Q Mr. Gunnigle, would you say you have been a friend and have known Mr. McGrath since 1930, when you first worked for him?

A Sure would.

Q Have you known him during that period of time socially?

A Yes.

Q Can you tell this Court and jury what you know of his reputation in the community for truthfulness and veracity?

A I heard it to be nothing but the best.

Q Have you formed an opinion, Mr. Gunnigle, as to his truthfulness, as a man of truthfulness and integrity?

A I've never known him to be untruthful.

MR. MEISELMAN: You may inquire.

(continued next page)

* * *

MR. MEISELMAN: All right.

Q I ask you if that is your stamp?

A Yes.

Q That is Peter McElroy's signature, dated 11/27 --

A Yes.

Q Do you happen to know ifMr. McElroy received legal fees for the preparation of thereturns at that time?

A I don't know, I am not activein the firm. I am a partner and I am not in the active practice of the firm.

Q It was your firm at that time?

A Yes. I wouldn't know the exact details of this.

MR. KAPLAN: Thank you, your Honor.

THE COURT: Anything further?

MR. MEISELMAN: No further questions.

THE COURT: Thank you. You are excused.

THE WITNESS: THank you.

MR. MEISELMAN: The defense calls Mr. McGrath.

J O H N M C G R A T H , the defendant herein was sworn by the Clerk of the Court and testified as follows:

DIRECT EXAMINATION

BY MR. MEISELMAN:

Q Mr. McGrath, how old are you?

A 66, sir.

Q Are you able to give us what you've done in employment, let's say, since 1930?

MR. KAPLAN: I object to going back to 1930. I think it is remote to the charges in the indictment.

THE COURT: We heard some ofit. I will permit it. I don't see any reason why not.

Q Would you need something to refresh your recollection?

A Slightly.

Q I show you Defendant's Exhibit D and I ask you if it refreshes your recollection?

A Yes.

Q Would you state to themembers of the jury and his Honor your employment since approximately 1930?

A Yes. My first date of employment was 7/21/30 at Jones Beach State Park. I was hired as an attendant for $5 a day.

MR. KAPLAN: I object. We are not interested in how much he got.

THE COURT: You can tell us what it is rather than the salary. Tell us the approximate times.

A I held that job until about '31. Then I was promoted to a foreman.

From a foreman in '31 to a bathhouse manager.

Then a short period of time in '31 I was also a lifeguard captain.

It goes on to '31, I was a laborer. I had various titles due to the way the money was available. I got reduced in salary.

From '32 to '34 I was a laborer.

Then I was a CWA foreman for about a year until '35.

Then I was a skilled laborer up to '36. From '36 to '43 I was a skilled laborer.

Q This is all at Jones Beach?

A Yes. I was rehired in '43 as a bathhouse manager. Until about '43 I was -- no,to '43. At '43 I was rehired as a manager again.

At '46 I was classified as an assistant supervisor or park operations at Jones Beach State Park. I can tell you the salary wasn't too high

In '47, I received a raise in grade, one grade, as assistant supervisor of park operations.

I retained that grade until 1952. In 1952 I was appointed provisionally as a park maintenance supervisor, grade 20. It was a provisional job.

I retained that title until 1955 and at that time I took and passed an exam and was made permanent in the

park maintenance supervisor title. But they had dropped it two grades. I wasn't getting the money I was before.

I have held that title or did hold that title until such time as when I retired on August 8th, I believe it was, 1974.

Q During some of this time, that you were employed -- withdrawn.

During any of these years, were you employed at the same time by the Long Island State Park Commission as well as the Jones Beach State Park Authority?

A Yes.

Q What years were those?

A It wouldn't show on this record, you have to get the record --

Q Can you tell us approximately?

A Yes. I would say eight or ten years.

Q From before you retired?

A Yes.

Q You were employed by the Jones Beach State Park Authority?

A Yes.

Q In what capacity?

A The same title as I was, Park Maintenance Supervisor.

Q You were employed by the Long Island State Park Commission?

A Yes.

Q Same title?

A Yes.

Q Were you paid separately by both organizations?

A Yes, and both were submitted on my income taxes.

Q In all the time that you were employed from 1930 until the date you retired, do you recall ever receiving a reprimand or censure or any charge with respect to your conduct?

MR. KAPLAN: I object.

THE COURT: Sustained.

Don't answer the question.

MR. KAPLAN: Can we caution counsel as to this area?

THE COURT: Yes. No more questions in that area.

MR. MEISELMAN: I respectfully except.

THE COURT: Surely.

Q Have you ever been arrested, Mr. McGrath?

A No, sir.

Q Have you ever been convicted of a crime of any kind?

A No.

Q Have you ever received a speeding ticket?

A Never, believe it or not.

Q A ticket --

A Any kind of a ticket, never.

Q Have you ever been in Court before?

MR. KAPLAN: I object as being irrelevant.

THE COURT: Sustained.

Don't answer the question.

MR. MEISELMAN: My exhibits were mixed up last night, I trust your Honor will bear with me.

THE COURT: Take your time.

(Pause.)

(Continued on next page)

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(The following occurred in the absence of the jury)

THE CLERK: Four-page document marked Defendant Exhibit CJ for identification.

(so marked)

THE CLERK: Thirteen-page document marked Defendant Exhibit CK, for identification.

(so marked)

THE COURT: Ready to proceed Mr. Weiselman?

MR. WEISELMAN: Yes, Your Honor.

If Your Honor please, as you may well know attempted to serve Mr. Randolph Taylor. I have received a reply from the Marshal's office that they have not been able to serve him. It's been marked as Defendant's Exhibit CJ for identification, and I'd like to put it in evidence.

THE COURT: Yes.

MR. KAPLAN: In evidence?

MR. WEISELMAN: It's connected with my next exhibit.

MR. TRITTLER: Can I have 15 seconds to read this?

MR. KAPLAN: Judge, he can't get this in evidence. If Mr. Taylor isn't to be served by the Marshal that has nothing to do with this case. He appeared here and if he couldn't serve him that's

not a matter for the jury.

THE COURT: I don't know about that.

MR. MEISELMAN: I wanted Your Honor to consider this in connection with the next exhibit.

Your Honor may recall that after Patrolman Taylor left the stand we subpoenaed the records of the New York State Parkway Police --

THE COURT: Would you want to bring in a witness to state --

MR. MEISELMAN: I brought a witness in and Your Honor refused to let him testify. I brought in Lieutenant Casilov. Your Honor refused to let him testify on the ground we should bring Mr. Taylor.

THE COURT: He was the proper witness.

MR. MEISELMAN: I have the records of the New York State Parkway Police and I'd like to take out those that are germane and show them to Your Honor.

THE COURT: You want the jury to know he resigned under charges.

MR. MEISELMAN: Yes -- and he pleaded guilty--

THE COURT: To the harassment?

MR. MEISELMAN: No. He was placed on two charges. One was improperly using a vehicle and the other was giving false and misleading information.

THE COURT: What did he plead guilty to?

MR. TEITLER: Puncturing a tire.

MR. MEISELMAN: Three tires. Part of the charges are Mr. Taylor's admissions that they are so and he acknowledged they are so. I think they are very germane. I didn't have the information at the time Mr. Taylor was here. I have been unable to get him back. I think there's a duty when the prosecution supplies a witness to bring him back.

The Government has not done so. I issued to the Marshal directing them under your order to serve Mr. Taylor and they have been unable to do so.

THE COURT: I'll hear Mr. teitler.

MR. TEITLER: Under Rule 609, had the Government attempted to on its direct case attempted to impeach any defense witness or any witness for puncturing tires that would have been reversible error. To impeach a witness it is mandatory for the purpose of excluding and attacking the witness -- any crim- punishable by less than one year in prison.

Mr. Taylor couldn't be impeached by any conviction for violation of the State of New York.

MR. MEISELMAN: I don't want to show the conviction. This is for the purpose of showing what the man said on the stand is not true.

I don't care about his conviction.

MR. TEITLER: Assuming he was allowed to do tha the documents in his possession in no way prove the witness left the Commission under fire.

MR. MEISELMAN: It says so in the record.

MR. KAPLAN: You are making it up. It didn't say that.

MR. MEISELMAN: If you say that I can't take it like Gospel from luck. Let the Judge decide what it says.

THE COURT: Even if that record says so, is that the proper way to introduce the evidence?

MR. MEISELMAN: I can't get Mr. Taylor. I attempted to bring him in. I attempted to bring a witness from the Commission.

THE COURT: Mr. Taylor would be the proper witness.

MR. MEISELMAN: We are at the close of the trial. The jury is becoming impatient, I believe.

These are the records of the Commission and I think it should be before the Court.

MR. TEITLER: First of all, these are not records of the Commission --

MR. MEISELMAN: The Polce Department.

THE COURT: What you can do Mr. Meiselman is make an offer of proof as to those records if you

wish and if you want to introduce those records or whatever Mr. Taylor's position may have been with the Long Island State Police through any witness you wish you may do so.

MR. MEISELMAN: I offer proof of the fact that Patrolman Randolph Taylor, 9 August, 1968 was charged with three specifications of misconduct, including but not limited to submitting a report to his commanding officer containing false and misleading information.

THE COURT: You may put -- the Court will have a hearing on this particular issue and you can go ahead with your witnesses.

MR. KAPLAN: Judge --

MR. MEISELMAN: I'm not finished with my offer of proof.

MR. KAPLAN: You said, "1968" --

MR. MEISELMAN: May I finish the offer of proof and then Mr. Kaplan may make a statement.

THE COURT: Let him finish.

MR. MEISELMAN: I offer to show that dated August 14, 1968, in the handling of Randolph Taylor he stated the following: "The undersigned desires to plead guilty to the charges specified and would at that time offer an apologize for the undersigned

conduct and cost for the department. Such conduct which is not in proper order shall not occur again."

We would offer charges against Patrolman Taylor dated January 15, 1969 in that he was using a police car other than for police purposes.

THE COURT: What the Court is going to permit you to do is to have a hearing on this proof outside the presence of the Jury and then the Court will see how much of this proof the Court will accept for the purposes of this procedure.

MR. MEISELMAN: When you say a hearing -- bring in a witness.

THE COURT: I am prepared right now for a hearing on this issue.

MR. MEISELMAN: I have no witnesses.

THE COURT: Then the Court will not act on mere papers you bring to the court.

MR. MEISELMAN: I accept Your Honor's decision and I am ready to proceed with the rest of the case.

THE COURT: Let me see the papers and I will look at them to see if there is anything the Court can accept.

(document is handed to the Court)

MR. KAPLAN: He left the department two or three years later in 1971. These are obviously

minor charges that had nothing to do with his leaving the department --

MR. MEISELMAN: If you look at the record of the court before Mr. Justice Lockman in Nassau County, you will find on the last page or two the condition of the plea before the court was that he wouldn't be with the department and if that's not resigning under fire, I don't know what is.

THE COURT: It is '71?

MR. KAPLAN: The first charges are irrelvant. The second charges -- there's only one way to prove that.

MR. MEISELMAN: I am not interested in the conviction. I don't care if that comes before the Court or not.

THE COURT: It's a question of truthfulness and credibility.

MR. KAPLAN: It was improper to inquire into that initially. Especially puncturing tires --

THE COURT: Aside from this item the Court will look at, is there anything else you have for the Court this morning?

MR. MEISELMAN: No sir. I have a witness.

THE COURT: Can we go forward now?

MR. MEISELMAN: Yes.

* * *

indictment, and perhaps with an explanation from your Honor that the Grand Jury amended the indictment on such and such a day, and I don't think that --

THE COURT: Yes, that can be done.

MR. TEITLER: And those are the facts, and that one we did I think the jury is entitled to know, that is what the Grand Jury did in this case.

MR. MEISELMAN: So I may not be prejudiced before the jury, I am going to make objection to that now, your Honor --

THE COURT: I understand.

MR. MEISELMAN: And that is on the record, and I will ask your Honor to tell the jury that in the middle of the trial, after the jury had been sworn, the Grand Jury met and found an amendment to an indictment, a proposed amendment to an indictment, and that is highly prejudicial, particularly when they heard this entire case on the basis of the indictment as it was read to them.

MR. TEITLER: Judge, I don't see how the jury can be prejudiced especially in view of the fact that your Honor has charged that a Grand Jury indictment is not evidence in the case and it is only a charge and you tell them that it up to the jury to find the ultimate facts in the case.

* * *

AFTERNOON SESSION 2669

(Jury enters the jury box.)

THE COURT: Madam Forelady, ladies and gentlemen of the jury:

We now come to the final stage of the proceedings. The Court will now charge you on the law to be applied to the facts in the case.

As you may recall, I initially gave you a precharge as to the manner in which the case would be presented to you. I told you that most of the evidence in the case would come in the form of the testimony of witnesses, and that you were to pay special attention to the manner in which the witnesses testified.

I believe I also instructed you that you would be the judges of the facts in the case, that being your sole province; and that your recollection of the facts after having heard all of the evidence in the case -- the testimony of witnesses and the documentary proof -- was to control the determination of the issues.

Likewise at that time I told you that I would be the judge of the law. This has not changed at this stage of the proceedings. I will not review the facts in the case for you because I am certain

that with summations by the attorneys there is no need for the Court to review the facts.

In any event, if you find that there is some fact in the case that you may have forgotten or don't recollect, or you can't agree with each other in your deliberations, you can have it read back from the record, and that will, I am sure, refresh your memory.

In any event, I am the judge of the law. You must accept what I say to be the law in this case.

Now, the attorneys have been permitted by the Court and by the rules to make opening statements and summations to you. Under no circumstances are the statements they have made by way of opening or by way of summation to be taken as evidence. However, the Court and the law does permit you to take the arguments that they have proffered before you and weigh those arguments. And if you agree with what they have said on either side of the case you may use those arguments in your deliberations and in discussing the case with each other, and try to convince one another as to what the final determination shall be with reference to the deliberations at hand.

If you feel that the arguments are not

commensurate with the testimony and the proof in the case, you may disregard them. The arguments are not evidence. You need not weigh them. However, there are times when the arguments of the attorneys will give you an insight as to something you may have missed, and you may discuss that portion of it if you so desire.

Now, of course, I also said to you that during the trial the Court will be the judge of the law. Likewise, as to motions which at times we had at the side bar, as you may recall. That was not for the purpose of keeping any of the proof from you, but were matters of law that were discussed between the attorneys and the Court itself and should not have come before you.

In any event, if you feel that you have discovered by some stretch of your imagination what this Court thinks as to either some of the testimony or the case itself, you should remove that from your mind because I tell you here and now I have come to no conclusion in this case nor have I indicated to you in any way whatsoever what my feeling is with reference to the facts in the case or with reference to the guilt or innocence of the defendant. That

is your province and your job. You should not try to weigh what you believe the Court's impression may be.

You must understand that the lawyers who appear before you are advocates. They are advocating the best case they can for the parties they represent and they have a right to exercise as much forcefulness as they desire in their questioning or otherwise in presenting their case. I say this because this is within the framework of the ordinary trial.

As to objections and rulings, it is the duty of the attorney on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made objections.

Upon allowing testimony or other evidence to be introduced over the objection of an attorney, the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence. As stated before, the jurors are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

When the Court has sustained an objection to

a question directed to a witness the jury must disregard the question entirely, and may draw no inference from the wording of it, or speculate as to what the witness would have said if he or she had been permitted to answer any question.

As to statements, rulings, remarks and comments of the Court during the course of the trial, no statement, ruling, remark or comment which I made during the course of the trial was intended to indicate my opinion as to how you should decide the case or to influence you in any way in your determination of the facts. If at any time I made any comment regarding the facts you are at liberty to disregard it. At times I asked questions of the witnesses. When I did so, it was for the purpose of bringing out matters which I felt should be brought out, and not in any way to indicate my opinion about the facts or to indicate the weight I felt you should give to the testimony of the witnesses. Also, you should not now show prejudice toward a lawyer or his client because I found it necessary to admonish the lawyer during the course of the trial. It is the duty of the Court to admonish an attorney who, out of zeal for his cause, does something which is not in keeping

with the rules of evidence or procedure. You are to draw no inference against the side to whom an admonition of the Court may have been addressed during the trial of this case.

In determining the facts, the jury is reminded that before each member was accepted and sworn to act as a juror, he was asked questions regarding his competency, qualifications, fairness and freedom from prejudice or sympathy. On the faith of those answers the juror was accepted by the parties. Therefore, those answers are as binding on each of the jurors now as they were then and it should remain so until the jury is charged from consideration of this case.

You cannot decide that you do not like the sections of law that I will quote to you or any other part of the charge. You have the obligation of accepting the law as I charge it, just as I have the obligation of accepting your findings of fact in your ultimate verdict as to the guilt or innocence of the defendant as to each charge.

It lends for predictability and stability if judges throughout the country in types of charges such as this, charge uniformly or substantially so and that juries accept it. It would be unfair for

you to decide this case on your notions of what the law should be, and another jury decide the case on their own notions of what the law should be.

That is why the obligation is a firm one and one that you should understand.

Of course, you know at this time that this case has come before you by way of an indictment presented by a Grand Jury sitting in this Eastern District. That indictment charges the defendant with the counts I shall now read to you. Remember, the indictment is merely an accusation, merely a piece of paper. It is not evidence and it is not proof of anything.

The indictment reads as follows:

United States of America against John McGrath:

Count One: On or about the 15th day of April, 1970, in the Eastern District of New York, John McGrath, a resident of West Islip, New York, who during the calendar year 1969 was married, did wilfully and knowingly make and subscribe a United States Joint Income Tax Return, Form 1040, on behalf of himself and his wife for the calendar year 1[illegible], which was verified by a written declaration that it was made under the penalties of perjury and was filed with

Internal Revenue Service, which said income tax return he did not believe to be true and correct as to every material matter, in that the said return reported gross income in the amount of $13,177.86 as wages and salary and additional miscellaneous income of approximately $1,042.91, whereas, as he then and there well knew and believed, he had received substantial income in addition that heretofore stated. In violation of Title 26, United States Code, Section 7206(1).

Count Two: On or about the 15th day of April, 1970, within the Eastern District of New York, John McGrath, the defendant, a resident of West Islip, New York, who during the calendar year 1969, was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1969, by preparing and caus ng to be prepared, by signing and caisomg tp be signed, and by mailing and causing to be mailed in the Eastern District of New York, a false and fraudulent joint income tax return, on behalf of himself and his wife, wherein it was stated that their taxable income for said calendar year was the sum of $7,651.17

of which the amount of tax due and owing thereon was the sum of $1,490.50, whereas, as he then and there well knew, their joint taxable income for the said calendar year was the approximate sum of $14,300, upon which said taxable income there was owing to the United States an income tax of approximately $3,000, in violation of Title 26, United States Code, Section 7201.

Count Three: On or about the 15th day of April 1971, in the Eastern District of New York, John McGrath, a resident of West Islip, New York, who during the calendar year 1970 was married, did wilfully and knowingly make and subscribe a United States Joint Income Tax Return, Form 1040, on behalf of himself and his wife for the calendar year 1970, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said income tax return he did not believe to be true and correct as to every material matter, and that the said return reported gross income in the amount of $14,244.35 as wages and salary and additional miscellaneous income of approximately $1,242.64, whereas he then and there well knew and believed, he had received substantial

income in addition to that heretofore stated, in violation of Title 26, United States Code, Section 7206 Subdivision (1).

Count Four: On or about the 15th day of April, 1971, within the Eastern District of New York, John McGrath, the defendant, a resident of West Islip, New York, who during the calendar year 1970, was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1970, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed in the Eastern District of New York, a false and fraudulent Joint Income Tax Return, on behalf of himself and his wife, wherein it was stated that their taxable income for said calendar year was the sum of $8,888.55 of which the amount of tax due and owing thereon was the sum of $1,614.48, whereas, as he then and there well knew, their joint taxable income for the said calendar year was the approximate sum of $17,300, upon which said taxable income there was owing to the United States an income tax of approximately $3,600, in violation of Title 26, United States Code,

Section 7201.

Count Five: On or about the 15th day of April, 1972, in the Eastern District of New York, John McGrath, a resident of West Islip, New York, who during the calendar year 1971 was married, did wilfully and knowingly make and subscribe a United States Joint Income Tax Return, Form 1040, on behalf of himself and his wife for the calendar year 1971, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said income tax return he did not believe to be true and correct as to every material matter, in that the said return reported gross income in the amount of $15,803.75 as wages and salary and additional miscellaneous income of approximately $1,333.97, whereas, as he then and there well knew and believed, he had received substantial income in addition to that heretofore stated in violation of Title 26, United States Code, Section 7206 Subidivision (1).

(Continued on next page.)

County six: On or about the 15th day of April, 1972 with the Eastern District of New York, JOHN McGRATH, the defendant, a resident of West Islip, New York, who during the calendar year 1971, was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1971, by preparing and by causing to be prepared, by signing and causing to be signed and by signing and by mailing and causing to be mailed in the Eastern District of New York, a false and fraudulent joint income tax return, on behalf of himself and his wife, wherein it was stated that their taxable income for said calendar year was the sum of $9,485.71, of which the amount of tax due and owing thereon was the sum of $1,707.21, whereas, as he then and there well knew, their joint taxable income for the said calendar year was the approximate sum of $20,800, upon which said taxable income there was owing to the United States an income tax of approximately $4,600; in violation of Title 26, United States Code, Section 7201.

County seven: On or about the 15th day of April 1973, in the Eastern District of New York, JOHN McGRATH, a resident of West Islip, New York, who during the calendar year 1972 was married, did wilfully and knowingly

make and subscribe a United States Joint Income Tax Return, Form 1040, on behalf of himself and his wife for the calendar year 1972, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said income tax return he did not believe to be true and correct as to every material matter, in that the said return reported gross income in the amount of $16,292.30 as wages and salary and additional miscellaneous income of approximately $2,250.40, whereas, as he then and there well knew and believed, he had received substantial income in addition to that heretofore stated; in violation of Title 26, United States Code, Section 7206 subdivision 1.

Count eight: On or about the 15th day of April, 1973 within the Eastern District of New York, JOHN MCGRATH the defendant, a resident of West Islip, New York, who during the calendar year 1972, was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1972, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed in the Eastern District of New York , a false

and fraudulent joint income tax return, on behalf of himself and his wife, wherein it was state that their taxable income for said calendar year was the sum of $10,852.08, of which the amount of tax due and owing thereon was the sum of $2,007.46, whereas, as he then and there well knew, their joint taxable income for the said calendar year was the approximate sum of $34,300 upon which said taxable income there was owing to the United States an income tax of approximately $8,700; in violation of Title 26, United States Code Section 7201.

Count nine: On or about the 15th day of April 1974, in the Eastern District of New York, JOHN McGRATH, a resident of West Islip, New York, who during the calendar year 1973 was married, did wilfully and knowingly make and subscribe a United States Joint Income Tax Return, Form 1040, on behalf of himself and his wife for the calendar year 1973, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said income tax return he did not believe to be true and correct as to every material matter, in that the said return reported gross income in the amount of $17,525.23 as wages and salary and additional miscellaneous income of approximately $2,595.75, whereas, as

he then and there well knew and believed, he had received substantial income in addition to that heretofore stated, in violation of Title 26, United States Code Section 7206, subdivision 1.

Count ten: On or about the 15th day of April, 1974 within the Eastern District of New York, JOHN McGRATH the defendant, a resident of West Islip, New York, who during the calendar year 1973, was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1973, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed in the Eastern District of New York, a false and fraudulent joint income tax return, on behalf of himself and his wife, wherein it was stated that their taxable income for said calendar year was the sum of $11,928.73, of which the amount of tax due and owing thereon was the sum of $2,244.21, whereas, as he then and there well knew, their joint taxable income for the said calendar year was the approximate sum of $33,700, upon which said taxable income there was owing to the United States an income tax of approximately $9,200; in violation of Title 26, United States Code, Section 7201.

Count eleven: At all times relevant herein, Charlie's Auto Center, North Bellmore, New York, a corporation organized under the laws of the State of New York, was engaged in the business of providing automotive reparis and automotive towing services. Charlie's Auto Center operated as tow truck operators having exclusive towing jurisdiction over a particular segment of the Long Island state parkways, and was subject to the authority, direction, supervision and control of the Long Island State Parks and Recreation Commission.

At all times relevant herein, JOHN McGRATH, the defendant, was Park Maintenance Supervisor of the Long Island State Parks and Recreation Commission, and as such, supervised towing operations on the Long Island state parkways. Accordingly, JOHN McGRATH, the defendant, had the power and was reasonably perceived by Charlie's Auto Center and its officers to have the power to adversely affect the towing business of Charlie's Auto Center on the Long Island state parkways.

In or about and between January, 1970 and December, 1973, both dates being approxiamte and inclusive, JOHN McGRATH, the defendant, knowingly, wilfully and unlawfully did attempt to and did obstruct, delay and affect commerce, as that term is defined in

Section 1951(b)(3) of Title 18 of the United States Code, and the movement of materials, equipment, and supplies in interstate commerce by attempting to obtain and obtaining approximately $1,000 in 1970 and $1,500 in each of the years 1971, 1972 and 1973 from Charlie's Auto Center and its officers, with the consent for such payment having been induced by the wrongful use of fear of economic loss, and under color of official right.

The aforesaid conduct of JOHN McGRATH, the defendant, had the potential of affecting commerce and did affect commerce by depleting the assets of Charlie's Auto Center which was regularly engaged in purchasing supplies, equipment, and material from interstate commerce.

The aforesaid conduct of JOHN McGRATH, the defendant, further had the potential of affecting commerce and did affect commerce because Charlie's Auto Center regularly performed services in connection with vehicles travelling in interstate commerce and the payments were made to insure that Charlie's Auto Center would be permitted to continue to perform such services; this being in violation of Title 18, United States Code, Section 1951.

Count twelve: At all times relevant herein,

Triple Arc Collision Incorporated, a corporation organized under the laws of the State of New York, and subsequent to 1972, Victor's Auto Center, a sole proprietorship, both located at 63 Smith Street, Hempstead, New York, were engaged in performing automotive repairs and automotive towing services. Triple Arc Collision Incorporated and Victor's Auto Center operated as tow truck operators having exclusive towing jurisdiction over a particular segment of the Long Island state parkways, and subject to the authority, direction, supervision and control of the Long Island State Parks and Recreation Commission.

At all times relevant herein, JOHN McGRATH, the defendant, was Park Maintenance Supervisor of the Long Island State Parks and Recreation Commission, and, as such, had direct responsibility for the supervision of the towing operations on the Long Island state parkways. Accordingly, JOHN McGRATH, the defendant had the power and was reasonably perceived by Triple Arc Collision Incorporated and Victor's Auto Center and its officers to have the power to adversely affect the towing business of Triple Arc Collision Incorporated and Victor's Auto Center on the Long Island state parkways.

In or about and between July, 1968 and December,

1973, both dates being approximate and inclusive, JOHN McGRATH, the defendant, knowingly, wilfully and unlawfully did attempt to and did obstruct, delay and affect commerce, as that term is defined in Section 1951(b)(3) of Title 18 of the United States Code, and the movement of materials, equipment, and supplies in interstate commerce by attempting to obtain and obtaining approximately $6,000 in 1968, $1,000 in 1969 and 1970, and $1,500 in each of the years 1971, 1972 and 1973 from Triple Arc Collision Incorporated and Victor's Auto Center and its officers, with the consent for such payment having been induced by wrongful use of fear of economic loss, and under color of official right.

The aforesaid conduct of JOHN McGRATH, the defendant, had the potential of affecting commerce and did affect commerce by depleting the assets of Triple Arc Collision Incorporated and Victor's Auto Center which was regularly engaged in purchasing supplies, equipment and material from interstate commerce.

The aforesaid conduct of JOHN McGRATH, the defendant, further had the potential of affecting commerce and did affect commerce because Triple Arc Collision Incorporated and Victor's Auto Center regularly performed services in connection with vehicles travelling in

interstate commerce and the payments were made to insure that Triple Arc Collision Incorporated and Victor's Auto Center would be permitted to continue to perform such services; this being in violation of Title 18, United States Code, Section 1951.

Count thirteen: At all times relevant herein, Alray Collision Corporation, Garden City Park, New York, a corporation organized under the laws of the State of New York, was engaged in the business of providing automotive repairs and automotive towing services. Alray Collision Corporation operated as a tow truck operator having exclusive towing jurisdiction over a particular segment of the Long Island state parkways, and subject to the authority, direction, supervision and control of the Long Island State Parks and Recreation Commission.

At all times relevant herein, JOHN McGRATH, the defendant, was Park Maintenance Supervisor of the Long Island State Parks and Recreation Commission, and as such, had direct responsibility for the supervision of the towing operations on the Long Island state parkways. Accordingly, JOHN McGRATH, the defendant, had the power and was reasonably perceived by Alray Collision Corporation and its officers to have the power to adversely

affect the towing business of Alray Collision Corporation on the Long Island state parkways.

In or about and between January, 1970 and December 1973, both dates being approximate and inclusive, JOHN McGRATH, the defendant, knowingly, wilfully and unlawfully did attempt to and did obstruct, delay and affect commerce, as that term is defined in Section 1951(b)(3) of Title 18 of the United States Code, and the movement of materials, equipment, and supplies in interstate commerce by attempting to obtain and obtaining approximately $1,000 in 1970 and $1,500 in each of the years 1971, 1972 and 1973 from Alray Collision Corporation and its officers, with the consent for such payment having been induced by the wrongful use of fear of economic loss, and under color of official right.

The aforesaid conduct of JOHN McGRATH, the defendant, had the potential of affecting commerce and did affect commerce by depleting the assets of Alray Collision Corporation which was regularly engaged in purchasing supplies, equipment and material from interstate commerce.

The aforesaid conduct of JOHN McGRATH, the defendant, further had the potential of affecting commerce

and did affect commerce because Alray Collision Corporation regularly performed services in connection with vehicles travelling in interstate commerce and the payments were made to insure that Alray Collision Corporation would be permitted to continue to perform such services; this being in violation of Title 18, United States Code, Section 1951.

Count fourteen: At all times relevant herein, Russo Brothers Service Station, Inc., East Northport, New York, a corporation organized under the laws of the State of New York, was engaged in the business of providing automotive repairs and automotive towing services. Russo Brothers Service Station, Inc., operated as a tow truck operator having exclusive towing jurisdiction over a particular segment of the Long Island state parkways, and subject to the authority, direction, supervision and control of the Long Island State Parks and Recreation Commission.

At all times relevant herein, JOHN McGRATH, the defendant, was Park Maintenance Supervisor of the Long Island State Parks and Recreation Commission, and, as such, had direct responsibility for the supervision of the towing operations on the Long Island state parkways. Accordingly, JOHN McGRATH, the defendant, had the power

and was reasonably perceived by Russo Brothers Service Station, Inc. and its officers to have the power to adversely affect the towing business of Russo Brothers Service Station, Inc. on the Long Island state parkways.

In or about and between January, 1970 and December, 1973, both dates being approximate and inclusive, JOHN McGRATH, the defendant, knowingly, wilfully and unlawfully did attempt to and did obstruct, delay and affect commerce, as that term is defined in Section 1951(b)(3) of Title 18 of the United States Code, and the movement of materials, equipment, and supplies in interstate commerce by attempting to obtain and obtaining approximately $1,000 in 1970 and $1,500 in each of the years 1971, 1972 and 1973 from Russo Brothers Service Station, Inc. and its officers, with the consent for such payment having been induced by the wrongful use of fear of economic loss, and under color of official right.

The aforesaid conduct of JOHN McGRATH, the defendant, had the potential of affecting commerce and did affect commerce by depleting the assets of Russo Brothers Service Station, Inc., which was regularly engaged in pur chasing supplies, equipment nad material from interstate commerce.

The aforesaid conduct of JOHN McGRATH, the defendant, further hadthe potential of affecting commerce and did affect commerce because Russo Brothers Service Station, Inc. regularly performed services in connection with vehicles travelling in interstate commerce and the payments were made to insure that Russo Brothers Service Station , Inc. would be permitted to continue to perform such services; this being in violation of Title 18, United States Code, Section 1951.

Count fifteen: At all times relevant herein, Sal Gullo's Garage Inc., Lindenhurst, New York, a corporation organized under the laws of the State of New York, was engaged in the business of providing automotive repairs and automotive towing services. Sal Gullo's Garage, Inc., operated as a tow truck operator having exclusive towing jurisdiction over a particular segment of the Long Island state parkways, and subject to the authority, direction, supervision and control of the Long Island State Parks and Recreation Commission.

At all times relevant herein, JOHN McGRATH, the defendant, was Park Maintenance Supervisor of the Long Island State Parks and Recreation Commission, and, as such, had direct responsibility for the supervision of the towing operations on the Long Island state parkways.

Accordingly, JOHN McGRATH, the defendant, had the power and was reasonably perceived by Sal Gullo's Garage, Inc. and its officers to have the power to adversely affect the towing business of Sal Gullo's Garage, Inc. on the Long Island state parkways.

In or about and between January, 1970 and December 1972, both dates being approximate and inclusive, JOHN McGRATH, the defendant, knowingly, wilfully and unlawfully did attempt to and did obstruct, delay and affect commerce, as that term is defined in Section 1951(b)(3) of Title 18 of the United States Code, and the movement of materials, equipment, and supplies in interstate commerce by attempting to obtain and obtaining approximately $1,000 each year in 1970 and 1972 and $1,500 in 1971 from Sal Gullo's Garage, Inc. and its officers, with the consent for such payment having been induced by the wrongful use of fear of economic loss, and under color of official right.

The aforesaid conduct of JOHN McGRATH, the defendant, had the potential of affecting commerce and did affect commerce by depleting the assets of Sal Gullo's Garage, Inc., which was regularly engaged in purchasing supplies, equipment and material from interstate commerce.

The aforesaid conduct of JOHN McGRATH, the defendant, further had the potential of affecting commerce and did affect commerce because Sal Gullo's Garage, Inc. regularly performed services in interstate commerce and the payments were made to insure that Sal Gullo's Garage, Inc. would be permitted to continue to perform such services; this being in violation of Title 18, United States Code, Section 1951.

Now I will give you some general introductory remarks, regarding the statute applicable to counts two, four, six, eight and ten of the indictment.

The individual counts numbered two, four, six, and ten of the indictment are all based on the very same statute which I will read for you in a few moments, to wit, Title 26 of the United States Code, Section 7201.

Let me emphasize this to you for it is of crucial importance -- although the counts numbered two, four, six, eight and ten are based on the very same section of the very same statute, each count charges a separate offense involving a different calendar year in which Mr. McGrath is alleged to have unlawfully and wilfully attempted to evade from additional Federal Income Tax of a substantial amount which allegedly was due and

owing from him to the Government for that calendar year over and above the amount of the tax which was declared or disclosed in his income tax return for that particular calendar year.

Therefore, each count should be carefully, seriously, separately and individually considered by you as a separate and distinct offense as charged.

I will now read for you the applicable law governing the separate and individual counts numbered two, four, six, eight and ten. Please apply this law to each of the aforementioned counts separately, and individually.

(Continued next page.)

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In each case ask yourselves in applying the law to each factual situation set out in the individual counts, has the Government met its burden of proof as to each such count when considered separately and individually?

Counts 2, 4, 6, 8, and 10 of the indictment are all based on Title 26 of the United States Code, Section 7201, which provides in pertinent part as follows:

Any person who wilfully attempts in any manner to evade or defeat any tax imposed by the Internal Revenue Code or the payment thereof shall be guilty of an offense against the laws of the United States.

Three essential elements are required to be proved in order to establish the offense charged in Counts 2, 4, 6, 8, and 10 of the indictment.

First: The fact that a substantial additional amount of federal income tax was due and owing from the accused for that calendar year, over and above the amount of the tax which was declared or disclosed in the defendant's income tax return for that calendar year;

Second: Knowledge by the accused that some additional income tax in a substantial amount was

due and owing from him to the Government for that calendar year, over and above the amount of the tax which was declared or disclosed in his income tax return for that calendar year;

And, third: The fact that the accused wilfully attempted, in some manner, to evade or defeat such additional tax, with the specific intent to defraud the Government of such additional tax. As stated before, the burden is always upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Failure to comply with the requirements of the Internal Revenue Code for one year is a separate offense from such failure to comply for a different year. Defendant's tax obligations in any one year must be determined separately from his tax obligations in any other year.

Although the proof need not show an evasion of all the tax alleged in the indictment, the evidence in the case must establish beyond a reasonable doubt that the accused wilfully attempted to evade

or defeat some substantial portion of the tax alleged as charged.

There is a distinction between civil liability for the payment of taxes and criminal liability. This is a criminal case. The defendant is here charged with the commission of a crime, and the fact that he may or may not have settled his civil liability for the payment of taxes claimed to be due from him to the United States is not to be considered by the jury in determining the issues in this case, except as such evidence in the case may throw some light on the question of intent.

The mere understatement of income without proof of wilfulness and specific intent does not show an intent to evade, and the Government is required to show wilfulness and specific intent.

The term "wilfully" used in the statute which I have read to you, that is referring to one who willfully attempts to evade taxes, means voluntary, purposeful, deliberate and intentional, as distinguished from actual inadvertence or negligence. Mere negligence, even gross negligence, is not sufficient to constitute wilfulness under the criminal law.

An act or failure to act is wilfully

done if done voluntarily and intentionally, and with the specific attempt to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

To establish the crime of income tax evasion as charged in the indictment the prosecution must prove beyond a reasonable doubt that the defendant wilfully attempted to evade or defeat the tax due the Government. This involves the specific intent to evade the tax and a willful commission or affirmative action by defendant in furtherance of that intent.

By way of illustration only, a willful attempt may be inferred from a consistent pattern of understatement of income, or the concealment of assets or sources of income, or from any other conduct which would be likely to mislead or to conceal.

If a person at the time he files his original returns in good faith, believes that he has paid all the taxes he owes, he cannot be guilty of criminal intent to evade the tax. But if a person acts without reasonable ground for belief that his

conduct is lawful, then it is for the jury to decide whether he acted in good faith, or whether he wilfully intended to evade the tax.

This issue of intent as to whether the defendant wilfully attempted to evade or defeat the tax, is one which the jury must determine from a consideration of all the evidence in the case bearing on the defendant's state of mind.

Whenever the fact appears beyond a reasonable doubt from the evidence in the case that the accused signed his tax return, the jury may draw the inference and find that the accused had knowledge of the contents of the return.

If you find beyond a reasonable doubt from the evidence in the case that a fraudulent return was filed with the specific intent on the part of the accused to evade or defeat a substantial part of the tax lawfully due from him, and that this was done wilfully, the offense was complete as soon as the fraudulent return was filed.

A fraudulent tax return is one that is false, and known to be false by the person making it or causing it to be made; and is wilfully filed with the intent to deceive.

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In computing defendant's income to determine whether a tax was due on it, the jury should include any legally acquired funds along with those lawfully acquired. If the jury finds from the evidence that there was taxable income received, and not recorded as the law required, it makes no difference as far as defendant's tax liability is concerned, whether such income was lawfully or unlawfully acquired.

Gains, profits and income must be included in gross income of a taxpayer for the taxable year in which they are actually or constructively received by the taxpayer.

In the sale of real property, the "selling price" includes all monies received, the amount of all notes, mortgages, or other liabilities that are part of the consideration for the sale, and the sale market value of other property received. The sale of real property as described above is deemed consummated on the date of the signing and delivery of the deed.

The Government has offered in evidence amended returns filed by the defendant for the years 1969-1973, which reflect a tax liability in excess of the sums disclosed in his original returns. You may consider

whether under all the circumstances of this case, these amended returns constitute evidence consisting of admission by the defendant that a substantial additional tax was originally due from the defendant, as contended by the Government, or the filing of amended returns is evidence of good faith by the defendant in correcting errors discovered by him, as contended by the defense.

You may consider the circumstances under which the amended returns were filed in determining this fact.

A material matter, as the term is used, in the statute, is a matter which is calculated to induce action or reliance by the Internal Revenue Service, or that which has a natural tendency to influence or is capable of influencing the Internal Revenue Service with respect to a tax return.

General introductory remarks regarding the statute applicable to Counts 1, 3, 5, 7, and 9 of the indictment.

The individual counts numbered 1, 3, 5, 7, and 9 of the indictment are all based on the very same statute which I will read for you in a few moments, to wit, Title 26 of the United States Code Section

7206(1).

Let me emphasize this to you for it is of crucial importance, although the counts numbered 1, 3, 5, 7 and 9 are based on the very same section of the very same statute, each count charges a separate offense involving a separate and different tax return for a different calendar year, which allegedly contained a written declaration that it was made under the penalty of perjury, and which income tax return, it is alleged, the defendant did not believe to be true and correct as to every material matter contained in it, at the time he allegedly, wilfully made and signed such income tax return.

Therefore, each count should be carefully, seriously, separately and individually considered by you as a separate and distinct offense, as charged.

I will now read for you the applicable law governing the separate and individual counts numbered 1, 3, 5, 7, and 9. Please apply this law to each of the aforementioned counts separately and individually.

In each case ask yourselves, in applying the law to each factual situation set out in the individual counts, has the Government met its burden

of proof as to each such count when considered separately and individually.

Counts 1, 3, 5, 7, and 9 of the indictment are all based on Title 26 of the United States Code, Section 7206, which provides in pertinent part as follows:

"Any person who wilfully makes and subscribes any income tax return which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter shall be guilty of an offense against the laws of the United States."

Counts 1, 3, 5, 7, and 9 of the indictment charge that the defendant, John McGrath, wilfully made and signed tax returns, each containing a written declaration that it was made under penalty of perjury. The counts further charge that the defendant did not at the time in question believe the tax returns to be true and correct as to every material matter contained in them.

Three essential elements are required to be proved beyond a reasonable doubt in order to esablish the offense charged in counts 1, 3, 5, 7, and 9 of

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the indictment.

First: The act or acts of making and subscribing an income tax return which contains or is verified by a written declaration that it is made under the penalties of perjury; and

Second: Which income tax return the declarant did not believe to be true and correct as to every material matter, in that the declarant then and there well knew and believed that he had received substantial income in addition to that reported in the income tax return; and

Third: That the defendant did such act or acts knowingly and wilfully.

In order to find the defendant guilty of any or all of the charges contained in counts 1, 3, 5, 7, and 9 of the indictment, you must not only find that he did the acts complained of and for which he stands charged, that is, the false signings of the tax returns, you must also find that the acts were done wilfully.

I have already defined wilfully for you at the beginning of this charge.

The term "wilfully" used in the statute which

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I have read to you, that is, referring to one who wilfully files a false return, means voluntary, purposeful, deliberate, and intentional, as distinguished from actual inadvertance or negligence. Mere negligence, even gross negligence is not sufficient to constitute wilfulness under the criminal law.

To repeat, the Government must prove that the defendant knew and specifically intended the tax return of each count to be false when he made and signed it.

With respect to those counts charging a violation of Title 26, United States Code, Section 7206 (1), that is the wilful making of a false material statement or an income tax return, the Government cannot rely on an inference of wilfulness arising out of a constant pattern of large understatement.

As used in a taxpayer's declaration on his individual income tax return, the form known as 1040, "true and correct" means that the document is "accurate and complete."

In Counts 1, 3, 5, 7, and 9, the defendant is charged with understating taxable income for the years 1969, 1970, 1971, 1972, and 1973, respectively.

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You must find that these returns were false and that they were false as to a material matter. In determining whether they were false as to a material matter, you should consider whether or not the income alleged to have been omitted would have been useful to the Internal Revenue Service in ascertaining the correctness of the tax declared. If the alleged omitted income would have been useful to the Internal Revenue Service in ascertaining the correctness of the tax declared, you may find that such omissions were material.

Ladies and gentlemen, please bear in mind that the burden is always upon the Government to prove beyond a reasonable doubt every essential element of the crime charged. The law never imposes upon a defendant in a criminal case the burden or duty of calling anywitnesses or producing any evidence.

General introductory remarks regarding the statute applicable to Counts 11, 12, 13, 14, and 15 of the indictment: The individual counts numbered 11, 12, 13, 14, and 15 of the indictment all all based on the very same statute which I will read

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for you in a few moments, to wit, Title 18 of the United States Code, Section 1951.

Let me emphasize this to you for it is of crucial importance, although the counts numbered 11, 12, 13, 14, and 15 are based on the very same section of the very same statute, each count charging a separate offense involving a separate towing concern, as well as separate, distinct and individual persons against whom Mr. McGrath allegedly committed extortion.

Therefore, each count should be carefully, seriously, and separately and individually considered by you as such.

I will now read for you the applicable law governing the separate and individual counts numbered 11, 12, 13, 14, and 15. Please apply this law to each of the aforementioned counts separately and individually.

In each case ask yourselves, in applying the law to each factual situation set out in the individual count: has the Government met its burden of proof as to each separate count considered separately and individually?

Counts 11 through 15 of the indictment are

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all based on Title 18 of the United States Code, Section 1951, which provides in pertinent part as follows:

"Whoever in any way or degree obstructs, delays or affects commerce or the movement of any article or commodity in commerce by extortion or attempts so to do, shall be guilty of an offense against the laws of the United Stats."

Counts 11 through 15 of this indictment have charged the defendant John McGrath with extortion in violation of Title 18, United States Code, Section 1951. The term "extortion" means the obtaining of property from another with his consent induced by wrongful use of actual or threatened force, violence or fear of economic loss or under color of official right.

In order to find the defendant guilty of each of these counts, you must be satisfied from the consideration of all the evidence and only the evidence that the Government has proved beyond a reasonable doubt the following essential elements that between the dates in question the defendant John McGrath knowingly, wilfully and unlawfully did attempt and did obstruct, delay, and affect commerce, as I

will define that term for you , and the movement of materials, equipment, supplies, and labor in interstate commerce by attempting to obtain and obtaining certain amounts of money from the specified towing concerns, such as Charlie's Auto Center in Count 11, its officers and its agents, with the consent for such payment having been induced by the wrongful use of fear of economic loss, and under color of official right.

Thus, you must find not only that John McGrath committed the acts of extortion alleged, but also that the acts of extortion obstructed, delayed or affected interstate commerce or the movement of materials, equipment, supplies, and labor in commerce, in any way or degree.

It is not necessary, however, to find John McGrath actually intended to obstruct, delay, or affect commerce by his acts. All that is necessary is that one of the natural effects of the extortion be an obstruction of interstate commerce. On this issue the Government need prove only that the defendant committed a crime prohibited by the statute, namely, extortion, the natural consequence

of which would be in any way or degree to obstruct, delay, or affect commerce. It is ordinarily reasonable to infer that a person intends the natural and proper consequences of acts knowingly done.

As stated before, the burden is always upon the Government to prove beyond a reasonable doubt every essential element of the crime charged. Always remember that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

Under Counts 11 through 15 of this indictment the defendant John McGrath is charged with five separate crimes of extortion through the wrongful use of fear of economic loss or under color of official right.

A finding by you that the defendant employed either means is sufficient for you to find extortion. I instruct you that it is not necessary for you to conclude that the defendant employed both methods or means. If you are satisfied beyond a reasonable doubt that the defendant utilized either means, that is, if you find that John McGrath obtained the monies alleged by either the wrongful use of fear of economic loss or under color of official right,

and that commerce was affected, you may convict the defendant.

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Fear of economic loss constitutes "fear" as that term is used in Title 18 United States Code, Section 1951 (the Hobbs Act). Payments need not be induced by the threatened interference with a pre-existing contract right, that is, threats to withhold payment for work already completed pursuant to a valid contract. Contract rights constitute only a part of the "package" of rights which can form the basis of an extortion. A person or a company has a right to do business free of any extortionate demand or any unlawful payment requirement.

"Fear" means a state of anxious concern, alarm, or apprehension. Anxious concern over anticipated economic loss or adverse effect on a business would constitute fear as this term is used in the statute. The fear that one will be unable to obtain or maintain a contract without "paying off" is fear as defined by the statute.

Thus, if you are convinced beyond a reasonable doubt that the defendant deliberately and intentionally utilized an individual's fear of economic loss to obtain property from a corporation of which such

person is an officer or agent, you may find that the defendant has committed extortion. However, mere voluntary payment of money, unaccompanied by any fear of economic loss whatsoever, does not constitute extortion. The fact that relations between some of the Government's witnesses and the defendant may have been cordial or friendly is not inconsistent with a finding of extortion by wrongful use of fear of economic loss.

The critical inquiry remains this: If you are convinced beyond a reasonable doubt by the evidence that the defendant deliberately and intentionally utilized a tower's reasonable fear of economic loss to his towing operation in order to obtain money or other valuable from that tower or his company, and that commerce has thereby been affected, you may find that the defendant has committed extortion as to the count dealing with that tower.

The crime of extortion as defined by the Hobbs Act, Title 18 United States Code, Section 1951, may be committed not only by use of fear, as I previously instructed you, but also under "color of official right." Extortion under color of official right is the wrongful taking by a public official of money not

due him on his office, whether or not the taking was accomplished by force, threats, or the use of fear. You will note, again, that extortion as charged in Counts 11 through 15 of this indictment, and as defined by federal law, is committed where property is obtained by consent of the victim by the wrongful use of fear, or when it is obtained under color of official right, and in either instance, the offense of extortion is committed.

Thus, when a public official takes or receives money not due to him or to his office or not allowed him or his office by law for the performance of his official duties, then the crime of extortion is committed whether or not such taking or receiving is accompanied by the use of fear, threats, or the rest. In other words, extortion under the color of official right is committed whenever a public officer corruptly uses his office to obtain property from another with his consent.

Wrongful use of public power or office to obtain payment not due to the official or his officers is the essence of the crime of extortion under the color of official right.

It is not necessary for a conviction of

extortion whether by fear of economic loss or under "color of official right" that you conclude that the defendant John McGrath actually was able to assure or guarantee or cancel towing contracts. The issue to be decided is not whether the defendant actually had the power to grant or withhold contracts but whether it was reasonable for the tower to believe, based upon McGrath's position in the Long Island State Parks & Recreation Commission and any representations you may find he made to the towers that the defendant had that power.

In connection with what I have just said about obtaining money or property under color of official right, I instruct you that if you find beyond a reasonable doubt that the defendant obtained money by reason of his official position without regard to whether this money was a condition for the awarding of contracts, you may find that the defendant obtained money or property under color of official right, which is extortion as defined by law. This is because extortion under color of official right, as I have told you, is the wrongful taking by a public official of money not due him or his office. This is true even if you find that the defendant

did not receive any direct or indirect benefit from the money given to him. The use to which the defendant put the money and other valuables paid allegedly by a towing operator is not an issue in this case. Whether he kept it, spent it, or gave it away, is immaterial in this case. Indeed, even if the money was used by the defendant for lawful purposes, it would not be a defense to extortion, if you are satisfied beyond a reasonable doubt that the defendant obtained the money under color of official right.

In other words, extortion as defined by law in no way depends upon having a direct or indirect benefit conferred upon the person who causes it to be committed.

Under the Hobbs Act, a charge that the defendant wrongfully induced payoffsor kickbacks, under color of official right does not require any proof of coercion, threats or fear. If the money allegedly paid to the defendantwas wrongfully induced under color of official right, you may find the defendant guilty of extortion without any showing of fear.

Moreover, even if such conduct also constitutes bribery, I instruct you that it is irrelevant

because extortion and bribery are not mutually exclusive crimes. Indeed the same set of facts might support a finding of both extortion and bribery at the same time.

The essence of the crime of extortion, again, is the wrongful use of public position or office to obtain payments of money or other valuables not properly due that official.

Again, it is not necessary that the purpose of the extortion, whether under color of official right or by fear of economic loss, be to affect interstate commerce. It is merely required by the law where extortion is shown that it did in some way or degree obstruct, delay, or affect commerce.

Where the resources of a business engaged in commerce are depleted or diminished in any manner or degree by payment of money obtained by extortion the capacity to efficiently conduct such business is to the extent of thedrain on its resources likely to be impaired.

In reference to the statutory requirement of the law that commerce be affected, you are instructed as a matter of law that there was such an effect on interstate commerce and the necessary federal

jurisdictional element is satisfied if you find beyond a reasonable doubt on each count that the towing operator on that count regularly received equipment and supplies, such as auto parts and paint, that were manufactured or shipped to New York from outside the State of New York.

Thus, if you find beyond a reasonable doubt that the particular towing operator, during the time stated in that count of the indictment purchased and received goods in interstate commerce, even though the goods were transported to a New York supplier, then the jurisdictional element is satisfied.

It does not matter that an act of extortion which is alleged in the indictment to have occurred on or about a specific date is found by you, from the testimony of the witnesses, to have actually occurred on another date. It is sufficient if you find that it occurred on or about the date specified within the indictment, within a reasonable time thereof.

I further charge you that it is not necessary for the United States to prove the exact amount alleged in the indictment. The crime of extortion does not depend on the amount or value of the property involved. It is sufficient if the evidence in the case establishes

beyond a reasonable doubt that any substantial amount was extorted from the corporation or partnership mentioned in the indictment.

Please bear in mind the following definitions in considering the essential elements of the crime charged:

"Knowingly." An act is done knowingly if done voluntarily and intentionally, not because of mistake or accident or other innocent reason.

The purpose of adding the word "knowingly" was to insure that no one would be convicted for an act done because of mistake, or accident, or other innocent reason.

An act is done "wilfully" if done voluntarily and intentionally, and with the specific intent to do something the law forbids; that is to say, with bad purpose, either to disobey or to disregard the law.

"Unlawfully" means contrary to law. So, to do an act "unlawfully" means to do wilfully something which is contrary to law.

Definition of specific intent -- applicable to all offenses charged in the indictment.

The crimes charged in this case are serious

crimes which require proof of specific intent before a defendant can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent, the Government must prove that a defendant knowingly did an act which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case.

Intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer the defendant's intent from the surrounding circumstances. You may consider any statement made and act done or omitted by a defendant, and all other facts and circumstances in evidence which indicate his state of mind. It is ordinarily reasonable to infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

Reasonable doubt. Now, there are in any case, and in this one, two types of evidence from which a jury may properly find a defendant guilty of a crime; one is direct evidence such as testimony

of an eye witness, the other is circumstantial evidence which is proof of a chain of facts and circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, it simply requires that before convicting a defendant the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

A defendant is presumed innocent of the crime. Thus the defendant, although accused, begins the trial with a clean slate and with no evidence against him, and the law permits nothing but legal evidence to be presented before a jury to be considered in support of any charge against the accused, so that the presumption of innocence alone is sufficient to acquit a defendant unless you, the jury, are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

It is not required that the Government prove guilt beyond all possible doubt. The test is one of reasonable doubt, and reasonable doubt is based on reason and common sense, the kind of doubt that

would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must therefore be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

You, the jury, will remember that a defendant is never to be convicted on mere suspicion or conjecture. The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

So, if the jury views the evidence in the case as reasonably permitting either of two conclusions, one of innocence and the other of guilt, you the jury should of course adopt the conclusion of innocence.

I have said that the defendant may be proven guilty either by direct or circumstantial evidence. I have said that direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. Also circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of a defendant. You, the jury, may make common sense inferences from the proven facts.

It is not necessary that all inferences drawn from the facts in evidence be consistent only with guilt and inconsistent with every reasonable hypothesis of innocence.

The test is one of reasonable doubt, and it should be based upon all the evidence, the testimony of the witnesses, the documents offered into evidence and the reasonable inferences which can be drawn from the proven facts.

An inference is a deduction or conclusion which reason and common sense lead the jury to draw from the facts which have been proved. You are to consider only the evidence in the case. But in your consideration of the evidence you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw, from the facts which you find have been proved, such reasonable inferences as seem justified in the light of your own experience.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt, of every essential element of the crime charged,

a defendant has the right to rely upon failure of the prosecution to establish such proof.

Proof of knowledge and intent:

Knowledge and intent exist in the mind. Since it is not possible to look into a man's mind to see what went on, the only way you have for arriving at a decision in these questions is for you to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and to determine from all such facts and circumstances whether the requisite knowledge and intent were present at the time in question. Direct proof is unnecessary. Knowledge and intent may be inferred from all the surrounding circumstances.

As far as intent is concerned, you are instructed that a person is presumed to intend the natural and probable, or ordinary, consequences of his acts.

You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves, and it goes without saying that you should scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show

whether a witness is worthy of belief. Consider each witness's intelligence, motive, and state of mind, and his demeanor and manner while on the stand. Consider the witness's ability to observe the matters as to which he has testified, and whether he impresses you as having an accurate recollection of these matters.

Consider also any relation which each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and an innocent misrecollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the

discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, that you think it deserves.

Another test that you can use in determining the truthfulness or credibility of a witness is to use your own good common sense in addition to these essentials that I have given you. You can use your good common sense as you do in your everyday experience where you must make important decisions based upon what others tell you. When you decide to either accept or ignore the statements of others, you use your common sense. Your good judgment will say to you somehow or other that whatever they say does not appear to be truthful, that somehow or other you just do not believe what they have said. That is your ability to reason, your ability to determine the truthfulness of the person you are speaking with. Likewise, your common sense should be used to determine the weight to be given the testimony of a witness.

You take that same good common sense into the jury room, you do not leave it outside. In addition to what I have said, use your common sense

as a test in exercising your good judgment and in determining whether or not this defendant is guilty of the crimes charged. It is for you to determine whether the witnesses in this case have testified truthfully, whether or not they have an interest in the case, what that interest may be and how great it is and whether or not they have told you falsehoods. This is all for you to determine.

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Every witness's testimony must be weighed as to its truthfulness. If you find any witness lied as to any material fact in the case then the law gives you certain privileges. One of those privileges is that you have the right to disregard the entire testimony of that witness. If you find, however, that you can sift through that testimony and determine which of the testimony is true and which is false, then the law allows you to take the portions which were true and weigh it and disregard those portions which were false. That again is within your prerogative.

The weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. You should consider all the facts and circumstances in evidence to determine which of

the witnesses are worthy of greater credence. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

You are not obliged to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness's bearing and demeanor, or because of the inherent improbability of his testimony, or for other reasons sufficient to you, that such testimony is not worthy of belief.

The Government is not required to prove the essential elements of the offense as defined in these instructions by any particular number of witnesses. The testimony of a single witness may be sufficient to convince you beyond a reasonable doubt of the existence of an essential element of the offense charged, if you believe beyond a reasonable doubt the witness is telling the truth.

All available evidence need not be produced. The law does not require the prosecution to call as

(Continued next page.)

witnesses all person who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require the prosecution to produce as exhibits all papers and things mentioned in the evidence.

However, in judging the credibility of the witnesses who have testified, and in considering the weight and effect of all evidence that has been produced, the jury may consider the prosecution's failure to call other witnesses or to produce other evidence shown by the evidence in the case to be in existence and available.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence, and no adverse inferences may be drawn from his failure to do so.

Absence of witness. If it is peculiarly within the power of either the prosecution or the defense to produce a witness who could give material testimony on an issue in the case, failure to call the witness may give rise to an inference that his testimony would be unfavorable to that party.

However, no such conclusion should be drawn by you with regard to a witness who is equally available to both parties or where the witness's testimony would be merely cumulative.

The jury will always bear in mind that the law never imposes on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Evidence in the case: Stipulations, judicial notice, inferences permitted. Statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When the attorneys on both sides stipulate or agree as to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence and regard that fact as proved.

The Court may take judicial notice of certain facts or events. When the Court declares it will take judicial notice of some fact or event, you may accept the Court's declaration as evidence, and regard as proved the fact or event which has been judicially noticed, but you are not required to do so since you are the sole judge of the facts.

During the course of this trial, certain

provisions of law have been judicially noticed. Since I am the sole judge of the law, you are required to accept those provisions of law judicially noticed as being the law, and to apply them along with all the other rules of law which I am now giving you during this charge.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them; and all facts which may have been admitted or stipulated; and all facts and events which may have been judicially noticed; and all applicable presumptions stated in these instructions; and all provisions of law judicially noticed.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

Unless you are otherwise instructed, anything you may have seen or heard outside the courtroom is not evidence, and must be entirely disregarded.

You are to consider only the evidence in the case. But in your consideration of the evidence,

you are not limited to the bald statements of the witnesses. In other words,you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in the light of experience.

You may or may not find that one or more of the witnesses before the Court were accomplices.

Testimony of an alleged accomplice: Now, who is an accomplice? An accomplice is one who unites with another person in the commission of a crime, voluntarily and with common intent. An accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony of an accomplice alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence. However, the jury should keep in mind that such testimony is always to be received with caution and weighed with great care.

You should never convict a defendant upon the unsupported testimony of an alleged accomplice, unless you believe that unsupported testimony beyond

a reasonable doubt.

Testimony of accomplice -- interested witness: The testimony of an accomplice who provides evidence against a defendant from immunity for punishment, or for personal advantage or vindication, must be examined and weighed by the jury with greater care than the testimony of an ordinary witness. The jury must determine whether an accomplice's testimony has been affected by interest or by prejudice against the defendant or by the grant of immunity from prosecution and must give that testimony special scrutiny.

Grants of immunity to alleged accomplices: During the course of this trial you have heard that certain government witnesses have been granted immunity with respect to their testimony that they allegedly made extortionate payments to Mr. McGrath while he was a public official, the consent for such payments having been induced by the wrongful use of fear of economic loss and/or under color of official right.

What the Government has done in granting such immunity is perfectly lawful. What does a grant of immunity mean? The answer is this -- the Government has told witnesses who testified that they participated in the making of extortionate payments to Mr.

McGrath that they won't be prosecuted as to what they testified to, either at the Grand Jury or at the trial. This is what we call use immunity. It means that the witness has some expectation of a personal advantage from testifying here. For that reason, you can consider that there may be a little motivation to slant his testimony or even to lie and you must judge whether the witness impresses you as the kind of a person who would want to and be willing to testify against an innocent man.

Therefore, you must examine the testimony of all the witnesses who are under immunity with somewhat greater care than the testimony of an ordinary witness to see how much his testimony has been affected by interest or prejudice.

Testimony of an admitted perjurer: The testimony of an admitted perjurer should always be considered with caution and weighed with great care.

As to the witnesses who have admitted lying to the Grand Jury or otherwise in the past you should consider their testimony and decide whether you wish to accept or reject it in whole or in part. You may decide, for example, that an admitted liar is unbelievable or, conversely, you may accept his testimony recognizing that in life there are persons

who have lied in the past but are not incapable of telling the truth in the present. Again, this is for you and only you to decide.

Impeachment of a witness' testimony by proof of a prior conviction refers to the witness Foley only. The testimony of a witness may be discredited or impeached by showing that the witness has been convicted of a felony, that is, of a crime punishable by imprisonment for a term of years. Prior conviction does not render a witness incompetent to testify, but is merely a circumstance which you may consider in determining the credibility of the witness. It is the province of the jury to determine the weight to be given to any prior conviction as impeachment.

Impeachment, inconsistent statements or conduct: The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible only to impeach the credibility of the witness, and not to establish the truth of these statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness's testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission is "knowingly" done if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

Effect of prior inconsistent statements or conduct by a witness not a party: Evidence that at some other time a witness, other than the accused, has said or done something, or has failed to say or do something, which is inconsistent with the witness's testimony at the trial, may be considered by the jury for the sole purpose of judging the credibility of the witness; but may never be considered as evidence or proof of the truth of any such statement.

Where, however, the witness is a defendant on trial in the case and, by such statement or other conduct, the defendant admits some fact against his interest, then such statement or other conduct, if knowingly made or done, may be considered as evidence of the truth of the fact so admitted, as well as for

the purpose of judging the credibility of the defendant as a witness.

An act or omission is "knowingly" done, if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

Testimony of government agents: The probable truthfulness and believability of every witness is for you, and for each of you to decide; that I have already instructed you. The fact that such witnesses come before you as government agents should not in the least change your attitude in this respect. Their testimony does not deserve either greater or lesser believability simply because of their official status.

Whether you do or do not believe any witness must depend upon how truthful you judge that witness to be after you have heard the testimony and formed your own conclusions as to the witnesses' believability.

#2

Opinion evidence - expert witness: The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call "expert witnesses." Witnesses who, by education and experience, have become expert in some art, science, profession or

calling, may state their opinions as to relevant and matterial matter, in which they profess to be expert, and may also state their reasons for the opinion.

You should consider each expert opinion received in evidence in this case, and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound or if you feel that it is outweighed by other evidence, you may disregard the opinion entirely.

Character evidence - reputation of defendant: Where a defendant has offered evidence of good general reputation for truth and veracity, or honesty and integrity, or as a law-abiding citizen, the jury should consider such evidence along with all the other evidence in the case.

Evidence that a defendant's reputation for truth and veracity, or honesty and integrity, or as a law-abiding citizen, has not been discussed; or that those traits of the defendant's character have not been questioned, may be sufficient to warrant an inference of good reputation as to those

traits of character.

Evidence of a defendant's reputation, inconsistent with those traits of character ordinarily involved in the commission of the crime charged may give rise to a reasonable doubt, since the jury may think it improbable that a person of good character in respect to those traits would commit such a crime.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

When a defendant in a case of this kind takes the stand, which he has a perfect right to do, he is subjected to all the obligations of witnesses, and his testimony is to be treated like the testimony of any other witnesses; that is to say, it will be for you to say, remembering the substance of his testimony, the manner in which he gave it, his cross-examination, and everything else in the case, whether or not he told the truth. Then again, it is for you to remember, you have a perfect right to do so, the interest the defendant has in the case. As he places himself as a witness, he stands like any other witness.

Judging the evidence: There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good sense; consider the evidence in the case for only those purposes for which it has been admitted, and give it a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If an accused be proved guilty beyond reasonable doubt say so. If not so proved guilty, say so.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict of guilty upon anything other than the evidence in the case; and remember it well that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Jury's recollection controls: If any inference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

As to punishment, now, under your oath as jurors you cannot allow a consideration of the punishment which may be imposed on the defendant, if convicted, to influence your verdict in any way or in any sense and to enter your deliberations.

The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendant solely upon the basis of such evidence and the law.

You are to decide the case upon the evidence, and the evidence alone, and you must not be influenced by any assumption, conjecture, or sympathy, or any interference not warranted by the facts until proven to your satisfaction.

Exclude sympathy and antipathy. In reaching your verdict , you are not to be affected by sympathy or antipathy for any of the parties, what the reaction of the parties or the public to your verdict may be, whether it will please or displease anyone, be popular or unpopular, or indeed, any consideration outside the case as it has been presented to you in this courtroom.

You should consider only the evidence -- both

the testimony and the exhibits -- find the facts from what you consider to be the believable evidence, and apply the law as I now give it to you to those facts. Your verdict will be determined by the conclusion thus reached, no matter whom the verdict helps or hurts.

Unanimous verdict: Now, in this type of case there must be a unanimous verdict. That means all twelve of you must agree, and it goes without saying that it becomes incumbent upon you to listen to one another and to argue out the points among yourselves in order to determine in good conscience whether your fellow juror's argument is one commensurate with yours or whether at least you can, with good conscience, agree with him. You have no right to suddenly and idly sit by and say, "I am not talking to anyone," "I am not going to discuss it," because people with common sense and the ability to reason must communicate, they must communicate their thoughts. So, anything which appears in the record and about which one of you may not agree -- talk about it amongst yourselves and then if you cannot agree as to what is in the record, well, you can ask the Court to have that portion of the testimony read back to you.

You may do so by knocking on the door and giving a note in writing to the United States Marshal who will then present it to the Court and I will then bring you into the courtroom.

The forelady will preside over your deliberations and will be your spokesman here in court.

As to the form of verdict, as to Count 1, it is guilty or not guilty.

Count 2, it is guilty or not guilty.

Count 3, it is guilty or not guilty.

Count 4, it is guilty or not guilty.

Count 5, it is guilty or not guilty.

Count 6, it is guilty or not guilty.

Count 7, it is guilty or not guilty.

Count 8, it is guilty or not guilty.

Count 9, it is guilty or not guilty.

Count 10, it is guilty or not guilty.

Count 11, it is guilty or not guilty.

Count 12, it is guilty or not guilty.

Count 13, it is guilty or not guilty.

Count 14, it is guilty or not guilty.

Count 15, it is guilty or not guilty.

At this point the alternates one and two are discharged with the thanks of the Court and the Court

wishes to thank you for your cooperation and attendance and your help.

You are discharged. You may take your things from the jury room and leave. Thank you.

(Whereupon Alternates 1 and 2 exited the courtroom.)

THE COURT: I will send into the jury room for the jury to use during their deliberations all of the evidence, a copy of the indictment, and also a copy of the amendment made to this indictment for use by the jury during its deliberations.

I will speak to the attorneys at side bar.

(Sidebar discussion between Court and counsel as follows:)

THE COURT: Any exceptions to the charge?

MR. MEISELMAN: I except to so much of the charge as incorporated into the charge the amendment.

THE COURT: Yes.

MR. MEISELMAN: Of course, I objected to that all along.

THE COURT: Yes, you did.

Anything else?

MR. MEISELMAN: No, sir.

MR. KAPLAN: No exceptions.

* * *

THE COURT: The marshals may take the jurors for their deliberations.

(Jury excused.)

(Recess taken.)

#3 (Time noted: 6:20 p.m.)

(Jury not present.)

THE COURT: Yes. You have seen Court Exhibit No. 2?

MR. MEISELMAN: I have, your Honor, but there appears to be a difference of opinion as to what they mean.

With respect to the testimony of Mr. Randy Taylor, what he witnessed, Mr. Kaplan and I stipulated as to the pages.

THE COURT: It says, "Gullo's testimony from when he says the exchange of money took place."

MR. KAPLAN: We don't know if it is one exchange or all the exchanges. Is it all the exchanges or the Taylor exchange?

THE COURT: I think it is the Taylor exchange.

MR. MEISELMAN: I agree.

MR. KAPLAN: I would like the Court to inquire.

THE COURT: Yes.

MR. MEISELMAN: Well, what Mr. Kaplan says --

* * *

the limited or use immunity I have already described in Question No. 1.

However, Mr. Ancona remains liable for any civil tax liabilities.

The jury may return for further deliberations.

(Whereupon, the jury was excused to continue their deliberations at 12:24 p.m.)

THE COURT: I guess we can go to lunch now. You can come back at a quarter of two.

MR. KAPLAN: They'll still be deliberating during their lunchtime.

THE COURT: They may deliberate. They're in there so if they wish to, they can. Two o'clock, gentlemen. Two o'clock will be all right.

MR. KAPLAN: I'll be around.

THE COURT: Their lunch is to be here at 12:30. It is now 12:25. Thank you.

(Whereupon, the Court recessed.)

(Whereupon, the Court resumed.)

(Time noted: 4:40 p.m.)

THE COURT: Come to order and be seated. Mark this as a court exhibit.

(Jury not present.)

THE CLERK: Court Exhibit 6, jury note, request

for refreshments. Note from jury marked as Court Exhibit 7.

THE COURT: All right, what it says is, "Your Honor, we are in a deadlock concerning the extortion counts. May we please, and the word please is underlined, have further instructions by the Court as to what to do?"

There is one of three things the Court can do. I can either give them more instructions on the Hobbs Act or a re-reading of instructions or give an Allen charge or the third thing is take a limited verdict as to those counts on which they agree. Those are the three things the Court can do.

MR. KAPLAN: Certainly, an Allen charge would seem to be one of the obvious alternatives open to the Court at this point.

THE COURT: I would ask them if they want more instruction first.

MR. MEISELMAN: I think we ought to give them the Allen charge.

THE COURT: You think we should give them an Allen charge?

MR. MEISELMAN: If they remain deadlocked maybe we'll consider the limited verdict, then.

* * *

by other judges in the court?

THE COURT: I could, but I don't see any reason.

MR. MEISELMAN: I think the first one --

THE COURT: The first one would be what you want?

MR. MEISELMAN: Yes.

THE COURT: I can do that. That is 17.18?

MR. MEISELMAN: 17.18, Judge. It gives them something.

THE COURT: Surely. Bring in the jury.

(Whereupon, the jury returned from their deliberations at 4:45 p.m.)

THE COURT: The Court has received Court Exhibit 7 which sets forth, "Your Honor, we are in a deadlock concerning the extortion count. May we please be instructed by the Court as to what to do?"

Would the jury want the Court to re-read the Court's instructions as to the extortion counts? Would you want that?

(Jury responds in affirmative.)

THE COURT: All right. Counts 11 through 15 of the indictment are all based on Title 18 of the United States Code, Section 1951, which provides in pertinent part as follows:

"Whoever in any way or degree obstructs, delays or affects commerce or the movement of any article or commodity in commerce by extortion or attempts so to do, shall be guilty of an offense against the laws of the United States."

Essential elements of the offense:

Counts 11 through 15 of this indictment have charged the defendant John McGrath with extortion in violation of Title 18, United States Code, Section 1951. The term "extortion" means the obtaining of property from another with his consent induced by wrongful use of actual or threatened force, violence or fear of economic loss or under color of official right.

In order to find the defendant guilty on each of these counts, you must be satisfied from the consideration of all the evidence and only the evidence that the Government has proved beyond a reasonable doubt the following essential elements that between the dates in question the defendant John McGrath knowingly, willfully and unlawfully did attempt and did obstruct, delay and affect commerce, as I will define that term for you, and the movement of materials, equipment, supplies and labor in interstate commerce by attempting to obtain and

obtaining certain amounts of money from the specified towing concerns, such as Charley's Auto Center in Count 11, its officers and its agents, with the consent for such payment having been induced by the wrongful use of fear of economic loss, and under color of official right.

Thus, you must find not only that John McGrath committed the acts of extortion alleged, and also that the acts of extortion obstructed, delayed or affected interstate commerce or the movement of materials, equipment, supplies, and labor in commerce in any way or degree.

It is not necessary, however, to find John McGrath actually intended to obstruct, delay or affect commerce by his acts. All that is necessary is that one of the natural effects of the extortion be an obstruction of interstate commerce. On this issue the Government need prove only that the defendant committed a crime prohibited by the statute, namely, extortion, the natural consequences of which would be in any way or degree to obstruct, delay or affect commerce. It is ordinarily reasonable to infer that a person intends the natural and probable consequences of acts knowingly done.

As stated before, the burden is always upon the Government to prove beyond a reasonable doubt every essential element of the crime charged. Always remember that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

Under counts 11 through 15 of this indictment the defendant John McGrath was charged with five separate crimes of extortion through the wrongful use of fear of economic loss or under color of official right.

A finding by you that the defendant employed either means is sufficient for you to find extortion. I instruct you that it is not necessary for you to conclude that the defendant employed both methods or means. If you are satisfied beyond a reasonable doubt that the defendant utilized either means, that is, if you find that John McGrath obtained the monies alleged by either the wrongful use of fear or economic loss or under color of official right and that commerce was affected, you may convict the defendant.

Fear of economic loss constitutes "fear" as that term is used in Title 18 United States Code,

Section 1951, "the Hobbs Act."

Payments need not be introduced by the threatened interference with a pre-existing contract right, that is, threats to withhold payment for work already completed pursuant to a valid contract. Contract rights constitute only a part of the "package" of rights which can form the basis of an extortion. A person or a company has a right to do business free of any extortionate demand or any unlawful payment requirement.

"Fear" means a state of anxious concern, alarm or apprehension. Anxious concern over anticipated economic loss or adverse effect on a business would constitute fear as this term is used in the statute. The fear that one will be unable to obtain or maintain a contract without "paying off" is fear as defined by the statute.

Thus, if you are convinced beyond a reasonable doubt that the defendant deliberately and intentionally utilized an individual's fear of economic loss to obtain property from a corporation of which such person is an officer or agent, you may find that the defendant has committed extortion.

However, mere voluntary payment of money, unaccompanied by any fear of economic loss whatsoever,

does not constitute extortion. The fact that relations between some of the Government's witnesses and the defendant may have been cordial or friendly is not inconsistent with a finding of extortion by wrongful use of fear of economic loss.

The critical inquiry remains this: If you are convinced beyond a reasonable doubt by the evidence that the defendant deliberately and intentionally utilized a tower's reasonable fear of economic loss to his towing operation in order to obtain money or other valuables from that tower or his company, and that commerce has thereby been affected, you may find that the defendant has committed extortion as to the counts dealing with that tower.

The crime of extortion as defined by the Hobbs Act,Title 18, United States Code, Section 1951, may be committed not only by use of fear, as I previously instructed you, but also under "color of official right."

Extortion under color of official right is the wrongful taking by a public official of money not due him or his office, whether or not the taking was accomplished by force, threats, or the use of fear. You will note, again, that extortion as charged in counts 11 through 15 of this indictment, and as

defined by federal law, is committed where property is obtained by consent of the victim by the wrongful use of fear, or when it is obtained under color of official right, and in either instance, the offense of extortion is committed.

Thus, when a public official takes or receives money not due him or to his office or not allowed him or his office by law for the performance of his official duties, then the crime of extortion is committed whether or not such taking or receiving is accompanied by the use of fear, threats, or the rest. In other words, extortion under the color of official right is committed whenever a public officer corruptly uses his office to obtain property of another with his consent.

(continued next page)

THE COURT: (Continuing) Wrongful use of public power or office to obtain payment not due to the official or his officers is the essence of the crime of extortion under the color of official right.

It is not necessary for a conviction of extortion whether by fear of economic loss or under "color of official right" that you conclude that the defendant John McGrath actually was able to assure or guarantee or cancel towing contracts. The issue to be decided is not whether the defendant actually had the power to grant or withhold contracts but whether it was reasonable for the tower to believe, based upon McGrath's position in the Long Island State Park and Recreation Commission and any representations you may find he made to the towers that the defendant has that power.

In connection with that I have just said about obtaining money or property under color of official right, I instruct you that if you find beyond a reasonable doubt that the defendant obtained money by reason of his official position without regard to whether this money was a condition for the awarding of contracts, you may find that the defendant obtained money or property under color of official right, which is extortion as defined by law. This is because

extortion under color of official right, as I have told you, is the wrongful taking by a public official of money not due him or his office. This is true even if you find that the defendant did not receive any direct or indirect benefit from the money given to him.

The use to which the defendant puts the money and other valuables paid allegedly by a towing operator is not an issue in this case. Whether he kept it, spent it, or gave it away, is immaterial to this case. Indeed, even if the money was used by the defendant for lawful purposes, it would not be a defense to extortion, if you are satisfied beyond a reasonable doubt that the defendant obtained the money under color of official right.

In other words, extortion as defined by law in no way depends upon having a direct or indirect benefit conferred upon the person who causes it to be committed.

Under the Hobbs Act, a charge that the defendant wrongfully induced payoff or kickback, under color of official right does not require any proof of coercion, threats or fear. If the money allegedly paid to the defendant was wrongfully induced under color of official right, you may find the defendant guilty of extortion without any showing of fear.

Moreover, even if such conduct also constitutes bribery, I instruct you that it is irrelevant because extortion and bribery are not mutually exclusive crimes. Indeed, the same set of facts might support a finding of both extortion and bribery at the same time.

The essence of the crime of extortion, again, is the wrongful use of public position or office to obtain payments of money or other valuables not properly due that official.

Again, it is not necessary that the purpose of extortion, whether under color of official right or by fear of economic loss, be to affect interstate commerce. It is merely required by the law where extortion is shown that it did in some way or degree obstruct, delay or affect commerce.

Where the resources of a business engaged in commerce are depleted or diminished in any manner or degree by payment of money obtained by extortion the capacity to efficiently conduct such business is to the extent of the drain on its resources likely to be impaired.

In reference to the statutory requirement of the law that commerce be affected, you are instructed

as a matter of law that there was such an effect on interstate commerce and the necessary federal jurisdictional element is satisfied if you find beyond a reasonable doubt on each count that the towing operator on that count regularly received equipment and supplies, such as auto parts and paint that was manufactured or shipped to New York from outside the State of New York.

Thus, if you find beyond a reasonable doubt that the particular towing operator, during the time stated in that count of the indictment purchased and received goods in interstate commerce, even though the goods were transported to a New York supplier, then the jurisdictional element is satisfied.

It does not matter that an act of extortion which is alleged in the indictment to have occurred on or about a specific date as found by you, from the testimony of the witness, to have actually occurred on another date. It is sufficient if you find that it occurred on or about the date specified within the indictment, within a reasonable time thereof.

I further charge you that it is not necessary for the United States to prove the exact amount alleged in the indictment. The crime of extortion does not depend on the amount or value of the property

involved. It is sufficient evidence if the evidence in the case establishes beyond a reasonable doubt that any substantial amount was extorted from the corporation or partnership mentioned in the indictment.

The jury may return for deliberations.

MR. MEISELMAN: Your Honor, may we have a side bar?

THE COURT: Yes, sure.

(Whereupon, the jury returned to their deliberations at 5:05 p.m.)

(Side bar.)

MR. MEISELMAN: I thought your Honor was going to read the Allen charge.

THE COURT: When I asked, they asked for the instructions.

MR. MEISELMAN: You can give them the Allen charge anyway.

THE COURT: Under the circumstances I wouldn't do it.

MR. KAPLAN: It's premature now.

THE COURT: This is the court exhibit. "We are deadlocked concerning the extortion. May we please be instructed by the Court as to what to do" That's what they asked for. That's why I did that. I would

* * *

Monday, and have them deliberate.

MR. KAPLAN: Judge, another alternative would be to give them the Allen charge tonight and ask them if they would like to continue for another couple of hours.

THE COURT: No, because another couple of hours is time for them to have dinner. We're runing into, within a half hour or so, so I think they're close to a meal time and that would put us at 9, that wouldn't get them back until after 9 and it will be a problem.

Bring in the jury.

MR. TEITLER: Judge, would it be possible to just inquire of the jurors, just as in an advisory manner as to what they would like to do, ask the foreman?

THE COURT: No, I won't put it up to them. I think this is a hung case and I think there should be further consideration.

(Jury is present in the jury box.)

THE COURT: As Court's Exhibit Number 11, "We have concluded that we cannot reach a unanimous decision on Counts 11 through 15. Please instruct us, your Honor, as to the other ten counts."

Now, without telling me, I don't want to know what your, whether you've reached a decision on, what

your decision is, I definitely don't want to know what your decision is as to Counts 1 through 10; do you have a decision on Counts 1 through 10?

THE FOREMAN: No.

THE COURT: You don't?

THE FOREMAN: No.

THE COURT: What I'm going to do then is, I want to give you one further instructions before the jury is disbanded, before, we have been at this, this is now the end of four weeks and a lot has gone into this case. There has been a lot of expense for the defendant in this case, there is no question as to that and I think that we should try if possible to reach some sort of a decision, if it's possible, if it's possible.

So, what I had in mind is, it's close to the dinner hour and I could send you out for dinner but that would involve two hours to get a dinner. What I had in mind was to permit you to go for the weekend and have you come Monday and give you one further instruction with the view to trying to reach a decision in this case, because everybody feels that it's important, and if you can possibly do so, without violating your conscience to what you're doing, it would be desirable that you do that.

* * *

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MR. MEISELMAN: Yes.

THE COURT: No question.

MR. KAPLAN: That's what we're saying.

THE COURT: I can tell them they don't have to deliberate on Counts 11 through 15 first, but they may deliberate on Counts 1 through 10.

MR. MEISELMAN: If they so choose.

MR. KAPLAN: They have to deliberate.

THE COURT: If they so choose.

MR. TEITLER: THey have an obligation of choice to deliberate on all the counts.

MR. KAPLAN: They have to come in with something, guilty, not guilty, or we're deadlocked, they have to come in with something.

THE COURT: Evidently they haven't even taken up the first ten, that is what it appears to me.

MR. KAPLAN: That's obvious.

MR. MEISELMAN: You know what it appears to me, your Honor, as if they have taken it up but they're deadlocked on those, too.

MR. KAPLAN: That's ridiculous, they never asked for anything.

THE COURT: They never asked for anything --

MR. KAPLAN: About the tax case and they didn't say they were deadlocked, only on Counts 11 through 15.

that in my community, which is small, most people know you, see you, and it becomes very bad. It hurts me. I realize that there isnothing I can do about it, but I will have to live with it.

Thank you, your Honor.

THE COURT: Thank you, Mr. McGrath.

Well, in connection with this case the Court has received numerous letters attesting to the good background of Mr. McGrath and the many things he has done in his community.

(continued next page)

THE COURT: There is one letter from John P. Finnerty who is a councilman of the town of Islip. Marjorie Bunn from Centereach, Alice Ackermann, she is a controller for Directional, a firm in Manhattan. Fred J. Smith, Sr. of Bellmore, New York. Michael Sabia of Cape Coral, Florida. Maxa S. Berid of Wilmington, Massachusetts. George F. Loser, retired. He is from Pinellas, Florida. Arthur Goldberg, an attorney, in Roslyn, New York. Mr. and Mrs. Thomas Kennedy from Westbury. Peter Amato, Suffolk County Sheriff's Office, Hauppauge. Kenneth Hunte from Bellmore, New York. Erna B. Berid of Rockville Center, Long Island. Charles T. Rand of East Marion, New York. Paul J. Bittner, he is in Amagansett. Dorothy M. Mott, she is the assistant principal of Bellmore Merrick Central High School Districts, Jerusalem Avenue Junior High School. It appears to be James Bertick of Sayville. Ollie J. Post of Poughkeepsie, New York. Alfred Carpentier, an investment counselor in Freeport. Ms.Anthony W. Teneralo of Freeport. And of course,this is Linda J. McGrath, his daughter. It is a very nice letter. Frank R. Flynn of Flynn's Hotel in Ocean Bay Park, Fire Island, New York. John V. Kelkelly of Massapequa and Thomas D. Blair, Director of Elementary Education at Whitesboro Central

School, Whitesboro, New York.

I think there are some other letters attached to the pre-sentence report. These letters are copies of those that the Court has made note of. They appear to be copies of those that have been mentioned by the Court.

Now this defendant was found guilty after trial by a jury between 1969 and 1973. The defendant demanded payment of approximately $31,000 from towing company operators in exchange for contracts which granted them towing rights on the Long Island State Parkways. The defendant failed to include the income from towing operators rental income from property he owned and interest income on his yearly income tax returns.

The jury found the defendant guilty of income tax evasion, of filing false tax returns and of unlawfully obstructing and affecting commerce by obtaining various sums of money from various auto towing companies operated on the Long Island State Parkways. These payments being induced by the wrongful use of fare of economic loss as under cover of official rights. Such payments causing the depletion of the assets of the various towing companies involved.

As to Count One, the imposition of sentence is

suspended and the defendant is fined $500. As to Count Two, the imposition of sentence is suspended and the defendant is fined $500 plus the cost of prosecution. The trial transcript as set forth on the memorandum from the prosecutor are $7,686.75 and the witness fees are $976. The total cost of prosecution are $8,662.75. As to Count Three, the imposition of sentence is suspended and the defendant is fined $500. As to Count Four, the imposition of sentence is suspended and the defendant is fined $500. As to Count Five, the imposition of sentence is suspended and the fine is $500. As to Count Six the imposition of sentence is suspended and the fine is $500. As to Count Seven, the imposition of sentence is suspended and the fine is $500. As to Count Eight, the imposition of sentence is suspended and the fine is $500. As to Count Nine, the imposition of sentence is suspended and the fine is $500. As to Count Ten, the imposition of sentence is suspended and the fine is $500. As to Count Thirteen, it is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of one year and one day plus a fine of $1,000. As to Count Fourteen, it is adjudged that the defendant is hereby committed to the custody

of the Attorney General or his authorized representative for imprisonment for a term of one year and one day plus a fine of $1,000. As to Count Fifteen, it is adjudged the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of one year and one day plus a fine of $1,000.

The sentence of imprisonment imposed in Count Thirteen, Fourteen and Fifteen are to be concurrent. Rule 32(a)(2) of the Federal Rules of Criminal Procedure requires the Court to advise the defendant of his right to appeal and the right of a person unable to pay the cost of such appeal to apply for a leave to appeal in the forma pauperis.

MR.KAPLAN: Your Honor, if I may, with respect to Count One through Ten, are we to understand that the fines are consecutive, to run consecutively for each count?

THE COURT: To run consecutive, that is correct.

MR. MEISELMAN: Your HOnor, may I address myself to the cost of the prosecution?

THE COURT: Yes, sure.

MR. MEISELMAN: With respect to the sum of $7,686.75, is that on a daily transcript or a regular transcript basis?

DEFENDANT'S EXHIBIT CJ FOR IDENTIFICATION.

U.S. MARSHALS SERVICE
PROCESS RECEIPT and RETURN

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF: U.S.
COURT NUMBER: 76 CR 156
DEFENDANT: John McGrath
TYPE OF WRIT(S): Subpoena

SERVE
NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN: ~~John McGrath~~ Randolph Taylor
ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code):
AT: 2 Sylvan Street Bayshore, N.Y.

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:
Meiselman, Boland, Reilly + Pittoni
5[illegible] Ave, [illegible] N.Y.

Number of writs to be served with this form: [redacted]
Number parties to be served in this case: 1
Check for service on U.S.A.:

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:
Will pick up original subpoena with US Marshal's return

Signature of Attorney or other Originator requesting service on behalf of: ☐ PLAINTIFF ☒ DEFENDANT
TELEPHONE NUMBER: 516-248-2400
DATE: Oct 29, 1976

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of writs indicated (Sign only first USM 285 if more than one 285 is submitted)	Total Writs	District of Origin	District to Serve	Signature of Authorized USMS Deputy or Clerk	Date
		53	53	[illegible]	11/1/76

I hereby certify and return that I ☐ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☒ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)

Name and title of individual served (if not shown above):
☐ A person of suitable age and discretion then residing in the defendant's usual place of abode.
Address (complete only if different than shown above):
Date of Service:
Time: am / pm

Signature of U.S. Marshal or Deputy	Forwarding Fee	Service Fee	Mileage (including endeavors)	Total
[signature]	—	—	33.84	33.84

REMARKS: 11/2/76 Individual not home at 4:00 pm 661-3267
To Accept Service. Home phone is
11/3/76 No one home/left
Returning past due date
11/4/76 Rec'd for Interrogatories. Husband not home. Left message for Mrs. to call office [illegible]
OFFICE #516-623-2299

3. NOTICE OF SERVICE

Subpoena to Testify DEFENDANT'S EXHIBIT CJ FOR IDENTIFICATION Cr. Form No. 20 (Rev. 5-68)

United States District Court

FOR THE

Eastern District of New York

UNITED STATES OF AMERICA

v.

John McGrath

No. 76 CR156

To Randolph Taylor residing at 2 Sylvan Street, Bayshore, N.Y.

You are hereby commanded to appear in the United States District Court for the Eastern District of New York at 225 Cadman Plaza East, Brooklyn in the city of New York on the 8th day of November 1976 at 9:30 o'clock A M. to testify in the above-entitled case.

This subpoena is issued on application of the[1] defendant

October 29, 1976.

LEWIS ORGEL
Clerk.

Meiselman, ~~Reilly~~ Boland, Reilly & Pittoni
Attorney for defendant
54 Willis Av., Mineola, N.Y.
Address

By Joseph A Dunseith
Deputy Clerk.

RETURN

Received this subpoena at _____ on _____
and on _____ at _____ I served it on the
within named _____
by delivering a copy to _____ and tendering[2] to _____ the fee for one day's attendance and the mileage
allowed by law.

_____,

Service Fees

By _____,

Travel _____ $
Services _____
Total _____ $

U.S. Marshal directed to make service of this subpoena Oct 29, 1976
Henry Bramwell
USDJ

[1] Insert "United States," or "defendant" as the case may be.
[2] Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825, or on behalf of a defendant who is financially unable to pay such costs (Rule 17(b), Federal Rules Criminal Procedure).

FPI M!—4-18-72-2400 PADS-7544

Subpoena to Testify DEFENDANT'S EXHIBIT CJ FOR IDENTIFICATION Cr. Form No. 20 (Rev. 5-68)

United States District Court

FOR THE

Eastern District of New York

UNITED STATES OF AMERICA

v.

John McGrath

No. 76 CR 156

To Randolph Taylor residing at 2 Sylvan Street, Bayshore, N.Y.

You are hereby commanded to appear in the United States District Court for the Eastern District of New York at 225 Cadman Plaza East, Brooklyn in the city of New York on the ~~8th~~ 8a day of November 1976 at 9:30 o'clock A M. to testify in the above-entitled case.

This subpoena is issued on application of the[1] defendant

October 29, 1976.

Meiselman, Boland, Reilly & Pittoni
Attorney for defendant
54 Willis Ave Mineola, N.Y.
Address

_____, *Clerk.*

By _____, *Deputy Clerk.*

RETURN

Received this subpoena at _____ on _____
and on _____ at _____ I served it on the
within named _____
by delivering a copy to _____ and tendering[2] to _____ the fee for one day's attendance and the mileage
allowed by law.

_____,

Service Fees

By _____,

Travel _____ $
Services _____
Total _____ $

[1] Insert "United States," or "defendant" as the case may be.
[2] Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825, or on behalf of a defendant who is financially unable to pay such costs (Rule 17(b), Federal Rules Criminal Procedure).

FPI-MI—9-7-72-2400 PADS-8106

DEFENDANT'S EXHIBIT CJ FOR IDENTIFICATION

U.S. MARSHALS SERVICE
PROCESS RECEIPT and RETURN

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF

DEFENDANT

COURT NUMBER

TYPE OF WRIT(S)

SERVE ➡ **AT**

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN

ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

Number of writs to be served with this form-285	
Number parties to be served in this case	
Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:

$29.40 check for witness attached

Signature of Attorney or other Originator requesting service on behalf of: ☐ PLAINTIFF ☐ DEFENDANT | TELEPHONE NUMBER | DATE

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of writs indicated (Sign only first USM 285 if more than one 285 is submitted)	Total Writs	District of Origin	District to Serve	Signature of Authorized USMS Deputy or Clerk	Date

I hereby certify and return that I ☐ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)

Name and title of individual served (if not shown above)

☐ A person of suitable age and discretion then residing in the defendant's usual place of abode.

Address (complete only if different than shown above)

Date of Service | Time: am / pm

Signature of U.S. Marshal or Deputy

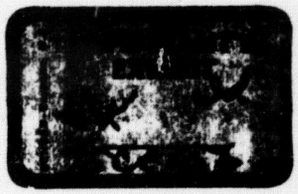
Forwarding Fee	Service Fee	Mileage (including endeavors)	Total

REMARKS:

USM-285(Ed. 11-1-74)

5. RECEIPT

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION.



9 August 1968

Ptl. Randolph Taylor
2 Sylvan Street
N. Bay Shore, New York 11706

Dear Patrolman Taylor:

Charges of misconduct and failure to comply with the Rules and Regulations of the Traffic and Park Patrol are hereby preferred against you.

Specification 1

While assigned to Belmont Lake State Park on 14 July 1968 on the 0800 to 1600 hour tour of duty you failed to comply with Article 1, Rule 1, Paragraph C on page 8 of the Rules and Regulations of the Traffic and Park Patrol.

To wit:

You violated Article IV, Rule 1, Paragraph B on page 10 of the aforementioned Rules and Regulations by displaying reluctance in the performance of your assigned responsibilities by failing to report for your scheduled tour of duty.

Specification 2

While assigned to Belmont Lake State Park on 3 August 1968 on the 0800 to 1600 hour tour of duty you violated the above mentioned Rules and Regulations.

To wit:

You violated Article IV, Rule 1, Paragraph E on page 10 of the aforementioned Rules and Regulations by failing to comply with Article II, Rule 13 on page 7 by reporting three hours late on your scheduled 0800 to 1600 hour tour of duty.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

Specification 3

On the same date listed in Specification 2, at about 1130 hours, you failed to obey a lawful order of a superior member, Captain F. G. McConnin.

To wit:

You violated Article IV, Rule 1, Paragraph E on page 10 by submitting a report to the Commanding Officer containing false and misleading information.

You are given until August 19, 1968 to complete and return to Chief Nicholas T. Landers the attached endorsement together with any matters in mitigation, extenuation or defense you may wish to submit.

If you are found guilty of the above charges you will be subject to suspension without pay for a period not exceeding two months, a fine not exceeding $100.00 or a reprimand as provided within Section 75 of the Civil Service Law.

Very truly yours,

Assistant General Manager

CRB:lb
Attach.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

STATE OF NEW YORK
LONG ISLAND STATE PARK COMMISSION
POLICE DEPARTMENT

SPECIAL REPORT

STATION Belmont Lake State Park N. Y.

14 August 1968

Subject: Plea of guilty to charges.

To: Commanding Officer, Babylon, N.Y.

The undersigned desires to plead guilty to the charges as specified, and would at this time like to offer an apology to the department for the undersigned's conduct and inconvenience caused to the department.

The undersigned further states that ~~that~~ such conduct which is not in proper order, shall not occur again.

Respectfully Submitted
Randolph Tyson #189

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

January 15, 1969

Pfl. Randolph Taylor
2 Sylvan Street
North Bay Shore, N.Y. 11706

Dear Patrolman Taylor:

Charges of misconduct and failure to comply with the Rules and Regulations have been preferred against you and the specifications of such charges were set forth in the letter dated September 11, 1968 which was served upon you.

This is to inform you that the charges contained in Specification 1 and Specification 3 in said letter of September 11, 1968 are hereby withdrawn and that Specification 2 in said letter is hereby amended to read as follows:

Specification 2

While assigned to Belmont Lake State Park during the period of March of 1968 to August 1968 you failed to comply with Article 1, Rule 1, Paragraphs A and C on page 1 of the Rules and Regulations of the Traffic and Park Patrol.

To wit:

You violated Article IV, Rule 1, Paragraphs C, D and G on page 19 by permitting an unauthorized person to ride with you in a Parkway Police patrol car while you were on duty, for purposes other than a police investigation and not required to meet any emergency situation.

You are given until January 23, 1969 to complete and return to Chief Nicholas T. Landers at Police Headquarters, Belmont Lake State Park, Babylon, N.Y. the attached statement together with any matters in mitigation, extenuation or defense you may wish to submit.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

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Mr. Randolph Tayler

January 15, 1969

If you are found guilty of the above charge you will be subject to suspension without pay for a period not exceeding two months, a fine not exceeding $100.00 or a reprimand as provided in the Civil Service Law.

Very truly yours,

General Manager

SMB/fb

Jan 15, 1969

Original charges served on Patrolman Taylor at 2:05 PM this date.

M Tansley

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

To: Commanding Officer, Police Department, Babylon, N. Y.

From: Patrolman Randolph Taylor - Shield No. 189

The undersigned acknowledges receipt of a letter of charges dated January 15, 1969.

Hearing is demanded for submission of matters in mitigation, extenuation and defense.

Plea of guilty is made and a hearing is waived, but matters in mitigation, extenuation and defense are herewith submitted.

Plea of guilty is made and a hearing is waived. No matters in mitigation, extenuation or defense are submitted.

(Cross out two paragraphs)

Randolph Taylor

Patrolman Randolph Taylor

Date: Jan 15, 1969

Taylor file

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

DISTRICT COURT OF THE COUNTY OF NASSAU
FIRST DISTRICT: CRIMINAL PART
- - - - - - - - - - - - - - - - - - - -x

THE PEOPLE OF THE STATE OF NEW YORK

- against -

Index No.
CR 2225B

RANDOLPH TAYLOR,

Defendant.
- - - - - - - - - - - - - - - - - - - -x

Violation: Section 145.00 Sub 1 PL

Criminal Part V
Mineola, New York
November 29, 1971

B E F O R E:

HON. JOHN S. LOCKMAN
District Court Judge

MINUTES OF CHANGE OF PLEA

AND SENTENCE

A P P E A R A N C E S:

WILLIAM CAHN, ESQ.
District Attorney of Nassau County
Attorney for the People
By: JOHN PALMER, ESQ.,
Assistant District Attorney

KENNETH K. ROHL, ESQ.
Attorney for Defendant
42 Fire Island Avenue
Babylon, New York

Reported By:
PETER T. MULLIGAN
Official District
Court Reporter

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

2

THE COURT: Randolph Taylor.

MR. PALMER: Your Honor, Mr. Randolph Taylor is charged with a violation of Section 145.00 of the Penal Law.

As your Honor knows, we worked out a disposition in chambers which was to the effect that the People would move to amend this information to read an harassment, which I believe is Section 240.25 Subdivision 1 of the Penal Law.

Now, this would be conditioned on a few things. One, that Mr. Randolph Taylor admit that the facts contained in the superseding information, CR 2434/71 - - that he did in fact puncture the tires of the car belonging to Rheva Morris. He admit that he did that. That he agree that he will not seek reinstatement with the Long Island State Parkway Police.

Those would be the conditions, your Honor.

MR. ROHL: Judge, in consideration of this proposed amended information, on behalf of the Defendant, he is willing at this time after discussing it with him and going into all the relevant

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

matters, he is willing to plead to the amended information charging harassment.

Secondly, he will make absolutely certain on the record that he will not apply for reinstatement for his position with the State Parkway Police.

Thirdly, he will admit the facts contained in the underlying information.

MR. PALMER: Can we have the Defendant do this, your Honor?

THE COURT: All right. Mr. Taylor, did you hear what your attorney just said?

THE DEFENDANT TAYLOR: Yes.

THE COURT: You understand that he was able to work out a disposition here, that the charge would be reduced to harassment and that he worked it out on certain conditions. The first condition is that you state on the record that you will not make application - - I think it is necessary that an explanation be placed on the record - - that had you been convicted of the original charge here, you would not have been able to get back into the Police Department. The Police Department is concerned.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

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At the same time if there is any middle ground to protect you from a misdemeanor conviction, they want you to avail yourself of it. However, they don't want you to be able to turn around and use that to get back in the Police Department. So that they want on the record and requesting that as a condition of their permitting the District Attorney to reduce this charge that you state affirmatively on the record that you have resigned from the Long Island State Parkway Police Department and that you have no intention of returning and that you waive any right that you may have to return to the Long Island State Parkway Police.

Do you understand that?

THE DEFENDANT TAYLOR: Yes. I agree.

THE COURT: Now, the other point that they request is that you acknowledge that the acts that are charged in this information you did do. You are familiar with what they are without my repeating them?

THE DEFENDANT TAYLOR: Yes, I acknowledge that.

THE COURT: Does that satisfy the conditions?

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

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MR. PALMER: Would you read the information, your Honor?

THE COURT: Randolph Taylor is charged with violating Section 145.00, Subdivision 1 of the Penal Law (reading), in that having no right to do so or any reasonable grounds to believe that he had such a right, did intentionally damage property of the Complainant; to wit, the Defendant did puncture the Complainant's tires with a road flare and did damage three tires.

All right? Is that satisfactory?

MR. PALMER: Thank you, your Honor.

THE COURT: I understand that restitution has been made here?

MR. PALMER: That's correct.

THE COURT: On that basis and in view of the Defendant's otherwise very good record, other than this particular incident, I am going to give him the minimum punishment under all the circumstances which is a $100.00 fine. I am going to give him until - -

MR. PALMER: Your Honor, I don't think we

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

have taken the plea yet. Has he pled to the charge?

THE COURT: Thank you. I thought his attorney had pled for him. But you are right.

In any case, how do you plead to the amended charge of harassment?

THE DEFENDANT TAYLOR: Guilty, your Honor.

THE COURT: That is $100.00. He needs time, I understand, Mr. Rohl?

MR. ROHL: Yes. The Defendant is on welfare, your Honor. It is coming into the Christmas season. I ask for time.

THE COURT: We had agreed on the 16th. Is that the date?

MR. ROHL: Yes, your Honor.

THE COURT: All right. That will be $100.00 or five days in the Nassau County Jail. The Defendant is to pay the fine before December 16th, 1971, at the Clerk's office.

Now, you know, Mr. Taylor, if you don't do that, sir, a warrant will be issued for your arrest?

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION 7

THE DEFENDANT TAYLOR: Yes, sir.

THE COURT: All right.

MR. ROHL: Thank you very much, your Honor.

THE COURT: Thank you, Mr. Rohl.

* * * * * * * *

C E R T I F I C A T I O N:

I hereby certify that the above transcription is true and accurate.

P. T. Mulligan

Peter T. Mulligan, Official District Court Reporter

Dated: Mineola, New York
November 30, 1971

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

New York State Department of Civil Service

THE STATE CAMPUS • 1220 WASHINGTON AVENUE • ALBANY, NEW YORK 12226

COMMISSION
Mary Goode Krone
PRESIDENT
Alexander A. Falk
Orin S. Wilcox

William J. Murray
ADMINISTRATIVE DIRECTOR

1/4/69

January 4, 1967

Subject: Randolph W. Taylor, Jr.
2 Sylvan Street
Bay Shore Terrace, New York
2882 Traffic & Park Officer

CONFIDENTIAL

Captain McConnin
Long Island State Park Commission
Belmont Lake State Park
Babylon, New York

Dear Captain McConnin:

In accordance with your request to Mr. Corbett of this Department the following information is submitted on Mr. Taylor.

Employment:

4/27/65-9/9/66 - Poultry Inspector, hourly. U.S. Department of Agriculture. Worked intermittently subject to call, satisfactory.

10/64-2/65 - Salesman, Gallub Motors, Discharged, unreliable in attendance and hours -- had constant money problems and was in debt beyond his means affecting services.

2/17/64-9/16/64 - Patrolman. World's Fair Corporation, employed by Pinkertons. Dismissed, poor disciplinary record, AWOL, off port, late for roll call, etc.

10/1/62-2/7/64 - Assembler Riveter D. Republic Aviation. Resigned, unsatisfactory, poor attitude, absence and tardiness.

5/61-4/62 - Package Charter, United Parcel Service-record clear.

8/9/60-9/5/60 - Life Guard, N.Y.C. Department of Parks, satisfactory.

5/27/60-8/6/60 - Life Guard, N.Y.C. Department of Parks, satisfactory.

6/13/56-9/3/56 - Life Guard, N.Y.C. Department of Parks, satisfactory.

Subject also showed employment with E.J. Korvette, Inc. from 5/62 to 10/62 but the Company failed to respond to inquiries. Mr. Taylor submitted

M.B.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

a statement of earnings and three letters from managers indicating him to be "intelligent, ambitious, and aggressive, and a gentleman."

Mr. Taylor, married, has four children from ten months to five years of age. With respect to World's Fair employment, he denied dismissal but admitted that he had been late once or twice and absent from roll call but not AWOL. He claimed that officers took advantage of authority and that it was common to be reprimanded. Mr. Taylor claimed that he received a commendation for excellent service from the Governor of New Mexico.

This Department verified Mr. Taylor's date of birth; high school graduation from Boys High School, Brooklyn; and honorable service in the Air Force from 11/28/56 to 1/28/60. He admitted having an accident in 1956 and while overseas his learner's permit was revoked. He made a false statement while applying for his license since he claimed he did not know his permit had been revoked. He claimed dismissal from Gallub Motors was based upon his inability to meet sales quota.

I trust the above information will meet your requirements.

Very truly yours,

Stanley H Grossman

Stanley H. Grossman
Supervising Investigator

SHG:mr

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

SUFFOLK COUNTY DEPARTMENT OF PUBLIC WELFARE
75 Fourth Avenue
Bay Shore, N. Y.

Richard DiNapoli
Commissioner of Public Welfare

TEL: Mohawk 6-7330

IN REPLY REFER TO:

CASE NAME Taylor Randolph

CASE NO. ~~12 / Pinetting~~ Ma 70092

DATE: 4/12/67

TO: L.I. State Parkway Police

Babylon N.Y. Att. Lt. Jager

Gentlemen:

Please take notice that Randolph Taylor is a recipient of public assistance or care from this Department and that his earnings are not subject to levy and execution by a judgment creditor and are exempt from garnishment pursuant to the provisions of Social Welfare Law Section 137-a of the Laws of the State of New York.

4/20/67
O mailed to
att Lt
WV

Very truly yours,

Case Supervisor
Division of Family Care
Suffolk County Welfare Dept.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

STATE OF NEW YORK

LONG ISLAND STATE PARK COMMISSION

STATE PARKWAY POLICE

SPECIAL REPORT

STATION Headquarters, Babylon N. Y.

3 Aug. 19 68

Subject: Failure of PTL.R.TAYLOR #189 to report for duty at assigned time.

To: Commanding Officer, Babylon N.Y.

1. On Aug.3,1968 undersigned was at Hqtrs.desk duty for the 8/4 tour.

2. Upon checking the Hqtrs.and Belmont schedule,it showed PTL.TAYLOR assigned to Belmont Station for the 8/4 tour date.

3. At 0815 hrs.date PTL.TAYLOR had not reported for duty and undersigned had PTL.MIKOLESKI #268 phone PTL.TAYLORS home.PTL.MIKOLESKI spoke with PTL.TAYLORS wife who stated that she did not know where PTL.TAYLOR was and that she had not seen him all night. At 0845 hrs. PTL.MIKOLESKI again phoned his home and his wife again stated that she had not seen him all night and did not know where he was.

4. At 1015 hrs.date PTL.TATLOR phoned Hqtrs.and stated that he was at Hampton Bays and had trouble with his car,but would report for duty as soon as possible.

5. At 1105 hrs.date PTL.TAYLOR reported for duty.

6. Undersigned questioned PTL.TAYLOR who stated that he had an argument with his wife and left in his car for Hampton Bays to visit friends. He further stated that he slept in his car and started for work in the morning. On the way to work he claimed that he had a blowout which caused his car to go off the road into the sand shoulder where he became stuck in the sand. PTL.TAYLOR went on to state that by the time he was pulled out of the sand and the tire repaired by the tow truck,it was past time for him to report for work.

7. Upon further questioning PTL.TAYLOR retracted the statement that he had a mechanic fix his tire,and stated that he changed the tire himself and that it was not repaired. Undersigned inspected the spare tire in PTL.TAYLORS trunk and found it in good order and filled with air.

8. PTL.TAYLOR gave no explanation of why he had not advised Hqtrs. at the time of the alleged delay.

9. PTL.TAYLOR submitted a reportin which he stated that a mechanic had repaired his flat tire,and it was after inspection of his spare tire that PTL.TAYLOR retracted the statement that a mechanic had fixed it.

Respectfully Submitted

W K Faulkner

Sgt.W.K.Faulkner #49

SPP - 216

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

To Chief Nicholas T. Landers:

You are hereby designated to hold and conduct a hearing on charges of misconduct in violation of the Rules and Regulations of the Traffic & Park Patrol of the Long Island State Park Commission or other dereliction preferred against Patrolman Randolph Taylor of the police force of the Commission and to make a record of such hearing and to refer same with your recommendations to the Commission or to the undersigned General Manager for review and decision and to issue under your hand on behalf of the Commission subpoenas requiring persons to attend such hearing.

Dated: 13 August 1968

_____

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

TO: Commanding Officer, Police Department, Babylon, New York

From; Patrolman Randolph Taylor, Shield #189

The undersigned acknowledges receipt of a letter of charges dated 9 August 1968.

~~(Hearing is demanded for submission of matters in mitigation, (extenuation and defense.~~

~~(Plea of guilty is made and a hearing is waived, but matters in (mitigation, extenuation and defense are herewith submitted.~~

(Plea of guilty is made and a hearing is waived. No matters (in mitigation, extenuation or defense are submitted.

(cross out two paragraphs)

Randolph Taylor

Patrolman Randolph Taylor #189

Date: 14 August 1968

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

19 August 1968

TO: Mr. Shapiro

FROM: Chief Landers

SUBJECT: Disciplinary Action - Ptl. Randolph Taylor

Attached is file of charges preferred against Patrolman Randolph Taylor, Shield #189.

Patrolman Taylor entered a signed written waiver of a hearing and a plea of guilty to charges of failing to report for scheduled duty, reporting three hours late for duty and submitting a report relative to his lateness which contained false and misleading information. The patrolman also expressed a promise to improve his record in the future.

In view of the patrolman's admission of guilt and his promise to do a better job in the future it is recommended that he be fined a sum of $25.00 to be deducted from his salary. A fine is deemed necessary in this case to further impress upon the patrolman the serious responsibility of his position.

N. T. Landers - Chief

NTL:lb

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION
COPY

LONG ISLAND STATE PARK COMMISSION
BELMONT LAKE STATE PARK
BABYLON, LONG ISLAND 11702

REGISTERED MAIL

August 22, 1968

Ptl. Randolph Taylor
2 Sylvan Street
N. Bay Shore, N. Y. 11706

Dear Ptl. Taylor:

With reference to our letter of August 9 relative to charges preferred against you, to which charges you have pleaded guilty and waived a hearing, please be advised that you are hereby fined the sum of twenty-five ($25.00), which will be deducted from your salary.

We are sure that this Commission can count on your cooperation in the performance of your duties as Traffic and Park Officer.

Very truly yours,

General Manager

SMS:ee

cc: Department of Civil Service
Chief Landers
Mr. Dougherty
Mr. Leitch
Mr. Lacy
Mr. Gross

2-22-63 25M (P95857)

404a

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

COPY

LONG ISLAND STATE PARK COMMISSION
BELMONT LAKE STATE PARK
BABYLON, LONG ISLAND 11702

cc: Mr. Dougherty
Chief Landers
Mr. Leitch
Mr. Lacy
Mr. Cross

August 22, 1968

Department of Civil Service
The State Campus
Albany, New York 12226

Re: Disciplinary Action
Item 2905 - Randolph Taylor

Gentlemen:

In accordance with Section 75 of the Civil Service Law, Randolph Taylor has had charges preferred against him, to which charges he has pleaded guilty and waived a hearing. He will be fined a sum of twenty-five dollars ($25.00), which will be deducted from his salary for the period ending September 11, 1968.

Enclosed are the following records:

1. Letter to Patrolman Taylor dated August 9, 1968.

2. Letter appointing H. T. Landers Hearing Officer dated August 13, 1968.

3. A plea of guilty and waiver of hearing executed by Randolph Taylor, dated August 14, 1968.

4. Memorandum from Chief Landers to Mr. Shapiro dated August 19, 1968, recommending a fine of $25.00.

5. Copy of letter to Ptl. Taylor dated August 22, 1968, advising him regarding the fine.

Very truly yours,

Administrative Officer

VL:ec
Encl.

405a

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

STATE OF NEW YORK
LONG ISLAND STATE PARK COMMISSION
STATE PARKWAY POLICE

SPECIAL REPORT

STATION Valley Stream N. Y.

23 August 68

Subject: Complaint, Mrs. JEAN WASHINGTON
67 Ronald Drive, Amityville, Tel. 598 1324

To: COMMANDING OFFICER, Babylon, N.Y.

1. At 2350 hours 22 August 1968, suject appeared at Headquarters and stated to Ptl. Mikoleski that she wished to file a complaint against Ptl. Randy Taylor.

2. Mrs. WASHINGTON stated to undersigned that she had been advised via telephone by a niece in Chicago that she had bad news for Mrs. WASHINGTON. When asked what was wrong, her niece stated that DENISE, Mrs. WASHINGTON'S daughter, who was visiting the niece in Chicago had told her that she was five months pregnant by Randy. This was allegedly confirmed by a subsequent telephone call from niece's mother, Mrs. MILLIE SIEGEL, sister-in-law of complainant.

3. Complainant was advised that the matter would be refferred to the Commanding Officer and she would be contacted on the morning on 23 August. At this point, Ptl. Randolph Taylor appeared at the station allegedly to drop off mail for Sgt. A. Kohler. This could not be confirmed as no one had observed him place any mail in the mail box at the main desk although there were two envelopes in the box addressed to the Sergeant when the box was checked. Ptl. Taylor denied any knowledge of what the complainant was talking about.

4. Ptl. Taylor asked to be permitted to speak to complainant in private (to try to straighten this out). This was unexplained and undersigned took both subjects into a room. Ptl, Taylor admitted to having intercourse with the girl but was not aware that she was pregnant. Complainant was concerned that Ptl. Taylor might lose his job but still felt that the complaint should be lodged as the matter would still be reported by her to her Welfare representative.

5. She was again advised that matter would be reported to Commanding Officer and she would be contacted in the morning.

6. After leaving Headquarters with her sons, she and the sons returned and the oldest son stated that he was advising his mother to hold off on the complaint until after she had spoken to her Welfare worker. They both felt that if Ptl. Taylor lost his position with this Department he would be unable to pay toward support of baby. Complainant was told that advice of welfare worker would not halt action by undersigned in reporting complaint. She would still be contacted by Department and at that time if she desired, she could withdraw complaint completely, and not try to hold complaint subject to advice offered by welfare worker.

Respectfully submitted,

A. C. Fecher

Lt. A.C. Fecher # 8

SPP - 216

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

Monday, 26 August 1968
Babylon Headquarters,
Belmont Lake State Park, Babylon, N. Y.

Statement of Hazel Denise Washington -

My name is Hazel Denise Washington, but I don't use Hazel and am known as Denise Washington. My date of birth is August 14, 1951 and I reside with my mother at 67 No. Ronald Drive, Amityville, N. Y. I am giving this statement in the office of Captain McConnin, Long Island State Parkway Police in the presence of my mother, Jean Washington, Detective Sergeant J. Gilsenan, Det. W. Norowski, Mrs. Brunner and the Captain.

I have known Randy Taylor since last September 1967 and I know that he is a policeman for the Long Island State Parkway Police. I have been having dates with him and once or twice have been in the police car with him. I also have been with him in Belmont Lake State Park. I started having intercourse with him back about last March and it has continued up until this month. To the best of my knowledge he always used protection, but it didn't work. I told him I was pregnant right after I missed the first period. I still had intercourse with him after he knew I was pregnant. Since going with Randy I have never had intercourse with anyone else. To the best of my knowledge it happened at several motels, I don't know where, and it could have been other places - I don't remember.

I have read the above and it is all true to the best of my knowledge.

Jean Washington
Jean Washington

Witnesses:
Capt. J. McConnin
Sgt. J. Gilsenan
Det. W. Norowski

State of New York
County of Suffolk

Subscribed and sworn to before me
this 26th day of August 1968.

John J. Jaeger
Notary Public
JOHN J. JAEGER
Notary Public, State of New York
No. 52-[illegible]
Qualified in Suffolk County
Commission Expires March 30, 19[illegible]

IBI 63-216 3-62

407a

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

1 - 3

CRIMINAL COMPLAINT NO. 68-159538 | DATE OF ARREST 9-2-68 | CLASSIFICATION A | I.R. 1110

POLICE DEPARTMENT
COUNTY OF SUFFOLK
ARREST REPORT

COMMAND REPORTING 231 | PCT. OF ARREST 1st | SECTION 106 | GRID 13-113

CHARGE: Rape 3rd degree | STATUTE: 130.25 -2 P.L. | TIME OF ARREST 2345 2-3 | ☐ SUMMONS ☐ WARRANT | ☐ REAR DOOR ☐ FOR OTHER AGENCY

PLACE OF ARREST: Parkway Police Hdq Belmont Ave North Babylon | ☐ INSIDE ☐ OUTSIDE

LAST NAME	FIRST	MIDDLE
Taylor	Randolph	William

NICKNAME / ALIAS: Randy | OCCUPATION: Parkway Patrolman

ADDRESS: 2 Sylvan Street Bayshore | EMPLOYER NAME & ADDRESS: State Parkway Police North Babylon

COMPLAINANT: Hazel Denise Washington | PHONE: 598-1324 | BIRTHPLACE: Brooklyn New York | CITIZEN: yes | SOCIAL STATUS: married

ADDRESS: 67 North Ronald Dr North Amityville | SOCIAL SECURITY NO.: 057-32-6199 | RELIGION: c4th | EDUCATION: 2yrs college

ARRESTING OFFICER: Allen P Goldschmidt | RANK: Det | SHIELD NO.: 321 | OCCUPATION / SERVICE: US air force | MOTHER'S MAIDEN NAME: Davis

VEHICLE OWNED/USED BY ARRESTEE: 1964 Korvette Sting Ray RDT 12 | FATHER'S NAME: Randolph Taylor Jr | WIFE'S MAIDEN NAME: Williams

DISPOSITION OF VEHICLE: left at the scene | PHOTOGRAPHED: X YES ☐ NO | CONVICTED C. C. NO'S: none

OPER. LIC. NO.: unknown | STATE: NY | DRIVER'S LIC. CLASS: 7 | LIQUOR (YES) YES | DATE & TIME BOOKED: 9-3-68 0020

ACCOMPLICES/KNOWN COMPANIONS: none

PERSONAL APPEARANCE DATA (See Back of Comp. Guide)

D. O. B.	AGE	SEX	COLOR	HEIGHT	WEIGHT	BUILD	COMPLEXION	HAIR	HAIR TYPE	EYES
11-19-38	29	male	negro	6'	171	medium	light	black	curly	brown

EYE DEFECTS	VISIBLE SCARS & MARKS	AMPUTATIONS & DEFORMITIES	TEETH	SPEECH
none	2 1/2 scar Rt wrist	none	own good	normal

DRESS	TATTOOS, ETC.	MUSTACHE, BEARD	RACE
work clothes	none	mustache	negro 2

WITNESSES - NAMES/ADDRESSES/PHONE NOS.:

PREVIOUS CONVICTIONS - ARRESTS: none

BRIEF DETAILS OF OFFENSE: The undersigned officer with the Assist Of Det Slone Responded to the State Parkway Police Hdq Belmont Ave North Babylon at this location did Place Randolph William Taylor under arrest for Rape in the 3rd degree.
Time of the arrest 2345 Hrs 9-2-68

FINAL CHARGE (S): | DISPOSITION & DATE:

COURT & LOCATION: 1st District Commack | MAGISTRATE: | DOCKET NO.:

TYPE MEBA NO.: 20069 | DATE: 9-3-68 | REPORTED BY: Allen P Goldschmidt Det 321 231

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

CENTRAL COMP. NO. 68-159538 | DATE OF REPORT 9/2/68 | CLASSIFICATION | CODE

POLICE DEPARTMENT
COUNTY OF SUFFOLK
OFFENSE REPORT

C AND REPORTING 231 | PCT. OF OCC. 1 | SECTOR 107 | CHID 11/30/

INCIDENT: RAPE 3RD DEGREE | STATUTE 130.25-2 | ☐ IN ☐ OUT
DATE OF OCC.: last week in March | TIME OF OCC.: evening
PLACE OF OCC.: All Weather Drive-In Sunrise Hi Hwy, Copiague
TYPE OF PREMISES - OBJECTIVE: drive in movies | CODE
VICTIM (PERSON-FIRM-BUSINESS): Hazel Denise Washington
MEANS OR METHODS USED - WEAPONS - TOOLS: n/a
ADDRESS: 67 North Ronald Dr. E. Amityville | PHONE
VEHICLE USED - DESCRIBE: unk.
AGE: 17 | SEX: female | RACE: /// | BIRTHPLACE: ///
HOW ATTACKED - WHERE ENTERED, ETC.: n/a
EMPLOYER: ///// | OCCUPATION: ////
CRIMINALS TRAITS - TRADEMARKS: n/a
REPORTED BY: Jean Washin ton | RELATIONSHIP: mother
WITNESSES (NAME - ADDRESS - PHONE)
ADDRESS: 67 E. Ronald Dr. E. Amityville | PHONE: 598-1324
REPORTS DUE: UR-34 | FROM - COMMAND: 231
HOW REC'D. ☐ 1 PERSON ☐ 3 SIGHT ☒ 5 PHONE ☐ 2 RADIO ☐ 4 PRECINCT ☐ 6 MAIL
SUSPECT CAN BE IDENTIFIED BY ☒ VICTIM ☐ WITNESS | PER. APPEAR. SEARCH MADE ☐ YES ☒ NO | PHOTOS TAKEN OF SCENE ☐ YES ☒ NO | EXAM FOR LATENT PRINTS ☐ YES ☒ NO

PERSONS WANTED/ARRESTED
1. SUSPECT: Randolph Taylor, #2 Sylvan Street, North Bay Shore,
2. DOB 11/19/38, M-N 29 yrs.

GIVE DETAILS OF OFFENSE - (LIST ALL LOST, FOUND, STOLEN OR RECOVERED PROPERTY ON REVERSE SIDE)

1. FACTS: On 8/26/68 at 1200 hours, undersigned was notified of a rape by Det/Sgt. Gilsenan and Det. Lorowski which could have happened in the 1st Precinct area. On 9/2/68, assigned interviewed Hazel Denise Washington, (age 17 years, DOB 8/14/51) in the Squad Room in front of her mother Jean, and Det. Diane Schroeder. During this interview, Hazel Denise admitted that she met one Randolph Taylor in September 1968 and he is a patrolman for the Long Island State Parkway Commission. She then went out on dates with him.

Sometime in the latter part of March, 1968, she met Taylor at the All Weather Drive In Movies, located on Sunrise Highway, Copiague. After meeting him they went to the Highway Inn, in Roosevelt. They stayed there a short time and then went back to the drive in movies. When they got there the movies were over, and Taylor drove his car into the movies and parked in the lot. They started to kiss one another and petting one another. Then Taylor pulled down his pants and the victim took down her pants and they had sexual intercourse. After they were done Taylor gave the victim some Emco foam to use on herself, which he had brought with him. The victim used i then Taylor took her home.

NOTE: BOTH [illegible] WITH DATE MUST BE OBTAINED AND ENTERED IN [illegible] DESCRIPTION, THE RECOVERY OF STOLEN AND/OR [illegible] PROPERTY RECORDED ON THIS REPORT.

FOUNDED ☒ YES ☐ NO | CLEARED BY ARREST 1 - 2 PENDING | 3 - 4 EXCEPTIONALLY CLEARED

T.T. MESS. NO. REPORTING THE STOLEN AND/OR LOST PROPERTY: 20060 | DATE OF T.T. MESS.

T.T. MESS. NO. CANCELLING ABOVE T.T. MESS. NO. | DATE OF T.T. MESS.

REPORTING OFFICER: Det. William [illegible] #2[illegible]/231

SUPERVISOR: Det/T.S. John P. Biscardi

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

POLICE DEPARTMENT - COUNTY OF SUFFOLK

C. C. NO.	DATE OF REPORT		PAGE NO.	COMMAND REPORTING
68-159536	9/2/68	Continuation Report	2 OF UR-34	231

In April 1968, she missed her period and went to Dr. Kopchynskis office for an examination. The doctor took several urine tests and told the victim that she was pregnant. She further stated that she told Taylor and he said that he would take care of paying for the child. She also stated that she never had intercourse with anyone else, she only had intercourse with Taylor. She also stated that she had intercourse with Taylor at least once a week since March 1968, until her 17th birthday.

2. PHOTOS AND PRINTS: Not applicable in this case.

3. STATEMENTS: Taken from the complainant and the victim by the undersigned.

4. EVIDENCE: None

5. SUSPECTS: Randolph Taylor, 2 Sylvan Street, North Bay Shore, DOB 11/19/38, N-M 29yrs.

6. CONCLUSIONS: The status of this case will be marked ACTIVE with this report.

REPORTING OFFICER	SUPERVISOR
Det. William E. May, #268/231	Det/Lt. John P. Biscardi

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

POLICE DEPARTMENT - COUNTY OF SUFFOLK

C. C. NO.	DATE OF REPORT		PAGE NO.	COMMAND REPORTING
68-159538	8/30/68	Continuation Report	2 OF UR-34	231

On 8/30/68, Denise Washington was at the pct. Assigned and Det. Mastrorocco interviewed Denise, and she stated that Randy Taylor had told her to come into the pct. to try to stop the investigation. This interview was at about 1215 hours. She further stated that Randy had already lost his job. Upon being asked questions she became very evasive in her answers. She then stated she would not answer any more questions and that she would be back on Monday with her mother.

On 8/30/68, at 1330 hours, assigned received a telephone call from Randolph Taylor, who stated that he just took a bottle of sleeping tablets. Assigned contacted the Turrets, spoke to Ptl. VanderStuff, related the information to him to send a car to to the subjects house at 2 Sylvan Street, North Bay Shore. Also the parkway police were contacted and it was ascertained that the subject was not suspended from his job and that he still had his guns in his possession. This information was related to headquarters Assigned contacted Sgt. Randolf at the emergency room at Southside Hospital, he stated that the subject was there and that he took a bottle of pills: Methapyrilene, 25MM, trade name of "Sleep ToNight." The only thing that these pills will do to him is make him sick.

REPORTING OFFICER	SUPERVISOR
Det. William [illegible] 283/231	Det/Lt. John P. Bigeard

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

CENTRAL COMPL. NO.	DATE OF REPORT	POLICE DEPARTMENT COUNTY OF SUFFOLK Supplementary Report	COMMAND REPORTING		DATE OF OCC.
68-159538	8/27/68		231		8/2
CLASSIFICATION	CODE		PCT. OF OCC.	SECTOR	GRID
			1st	105	15/109
INCIDENT	STATUTE	PLACE OF OCC.			
CONFIDENTIAL INVESTIGATION		1st Pct. Area			
COMPLAINANT (VICTIM-FIRM-BUSINESS)		ADDRESS			
1st Squad Dets.		North Lindenhurst			

GIVE DETAILS - (LIST ALL LOST, FOUND, STOLEN OR RECOVERED PROPERTY ON REVERSE SIDE)

On 8/26/68, assigned was notified of a possible rape in the Third degree, Sec. 130.25 subdivision 2 of the Penal Law, by Det/Sgt. J. Gilsenan and Det. W. Norowski, of the Long Island Parkway Police. They stated that a Mrs. Jean Washington came into their office on Monday, 8/26/68, to make a complaint against Ptl. Randolph Taylor. Mrs. Washington stated that Ptl. Taylor had intercourse with her daughter, Hazel Denise Washington, D/B 8/14/51, 67 North Ronald Drive, North Amityville, since March of 1968, and that she is now approximately 5 months pregnant.

The victim gave a statement to the aforementioned officers in which she stated that she has been having dates with Taylor since Sept. 1967, in the police car in Belmont State Park, and that she first started having intercourse with him in March 1968, but never in the police car or in Belmont State Park. She further stated that she told Taylor that she was pregnant right after she missed her first period. After telling him this she still had intercourse with him and she did not have intercourse with anyone else. Also she stated that it happened in several motels, the names of which she does not know.

On 8/28/68, assigned and Det/Lt. John Biscardi at 1430 hours, responded to interview one Hazel Denise Washington, at her home, at 67 Ronald Drive, North Amityville. Upon arrival, Hazel answered the door, we identified ourselves, were invited into the house by Hazel. We asked if her mother was home and she stated that her mother was at work and would not be home until 1830 hours. Hazel at first thought we were from the Parkway Police, but after she found out we were Suffolk County Dets. she refused to elaborate on the incident. We advised her we would interview her again when her mother was home and left the house.

On 8/28/68, at 1500 hours, assigned was contacted by a Mr. Rudner of Siben & Siben Law Office, 665-3400, that he was retained by Randolph Taylor. The assigned has never spoken to, contacted or investigated Taylor, so cannot understand the need of Taylor employing a Lawyer at this time.

On 8/28/68, assigned contacted Mrs. Washington by phone. Mrs. Washington stated that time that Randy Taylor was at the house and that he gave her daughter Denise $30.00 also, that she would bring her daughter to the pct. for an interview on Monday, 9/2/68.

NOTE: BOTH T.T. MESS. NO'S. WITH DATES MUST BE OBTAINED AND ENTERED BY COMMAND REPORTING THE RECOVERY OF STOLEN AND/OR LOST PROPERTY BEFORE THIS REPORT IS APPROVED.		T.T. MESS. NO. REPORTING THE STOLEN AND/OR LOST PROPERTY.	DATE OF T.T. MESS.
FOUNDED ☒ YES ☐ NO	☐ - 1 ACTIVE ☐ - 2 PENDING ☐ - 3 CLEARED BY ARREST ☐ - 4 EXCEPTIONALLY CLEARED	T.T. MESS. NO. CANCELLING ABOVE T.T. MESS. NO.	DATE OF T.T. MESS.
REPORTING OFFICER: Det. William E. Kay 288/231		SUPERVISOR: Det/Lt. John V. Biscardi	

William E. Kay

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

CRIMINAL COMPLAINT NO. 68-159538
DATE OF ARREST 9-3-68

POLICE DEPARTMENT, COUNTY OF SUFFOLK
COURT DISPOSITION REPORT

ARREST NO. 6277-68 ID 3236
COMMAND REPORTING AND DATE 231

DEFENDANT'S LAST NAME: TAYLOR FIRST: Randolph MIDDLE: William
a.k.a.
DEFENDANT'S HOME ADDRESS: 2 Sylvan St., Bayshore, New York
HOME PHONE NO. 666-3719
CHARGE(S) ON ARRAIGNMENT: Rape 3rd Degree Sect. 130-25 Sub-div 2
DATE OF ARRAIGNMENT: 9-2-68
PRESIDING JUDGE: Nucci
ARRESTING OFFICER: Allen P. Goldschmidt, Det. #321 COMMAND: 231
NAME & ADDRESS OF BAILOR: none
BAIL: ☒ YES ☐ NO TYPE: CASH / BOND
AMOUNT OF BAIL: ROR IF PROPERTY, LIBER NO.
DEFENSE COUNSEL: Kenneth ROHL
PROSECUTOR: A.D.A. Pease
HISTORY OF ADJOURNMENTS, ETC.

9-12 Exam./ 9-26 Exam./ 10-4 Counsel/ 10-25 Exam./ 11-14 Exam.

11-14-68 before Judge Meismann the case was dismissed- faulty information given by the complainant regarding the location of incident.

To be submitted in De Novo: Grand Jury #1244-68/ Grand Jury Date 12-17-68

FINAL CHARGE(S)
DISPOSITION & DATE (3)
PRESIDING JUDGE COURT
REPORTING OFFICER'S SIGNATURE
DATE PRESENTED TO GRAND JURY
Presented 12-17-68 Handed 12-23-68 Hon. George Mc Inerney - No Indict. — Returned — Dismissed — D-1244-68 - Rape 1st degree.....
CERTIFIED BY — (SIGNATURE)
CRIMINAL RECORD & IND. NO.
DATE & PLEA ON ARRAIGNMENT
DATE PLEADED GUILTY TO
DATE OF TRIAL & VERDICT
DATE SENTENCED & BY WHOM
SENTENCE (AND/OR) REMARKS

1244-68 68-159538 D-1244-68 arb

FORM 1010 WHITE — CENTRAL RECORDS CANARY — COMMAND PINK — ID GOLD — CHIEF BUFF — DAO GREEN — COURT

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

CENTRAL COMPLAINT NO. 68-159538

DATE OF ARREST 9/2/68

DEFENDANT'S LAST NAME

POLICE DEPARTMENT, COUNTY OF SUFFOLK
COURT DISPOSITION REPORT

ARREST NO. IB 13836
6277-68
COMMAND REPORTING AND DATE 231 9/ 2/68

Taylor Randolph

D.O.B. 11-19-38

2 Sylvan Street, Bay Shore

HOME PHONE NO. MO6-3719

DATE OF ARRAIGNMENT 9-3-68

PRESENTING OFFICER Peter M. Mucci

COMMAND 231

CHARGE(S) AND LAW

Rape 3rd Degree contrary to Penal Law section 130.25-2 P.L.

NAME & ADDRESS OF BAIL

ARRESTING OFFICER Det. Allen Goldschmidt 6321 231

BAIL ☐ YES ☐ NO

TYPE ☐ PROPERTY BOND ☐ CASH ☐ BOND

AMOUNT OF BAIL $

IF PROPERTY

DEFENSE COUNSEL

PROSECUTOR

LIBER NO. PG. #

HISTORY OF ADJOURNMENTS, ETC.

CEOCR-5356-68

9/4/68 - arraignment

9/12/68 - adj.

9/26/68 - adj. 10/4/68 - adj.

10/25/68 - adj.

11/14/68 - Dismissed after examination.

FINAL CHARGE(S)

Rape 3rd. 130.25

DISPOSITION & DATE

11/14/68 - Dismissed after examination-
Incomplete - See attached 10p

PRESIDING JUDGE COURT

Hon. Norton Weissman, 1st. Dist Commack

REPORTING OFFICER'S SIGNATURE

DATE PRESENTED TO GRAND JURY

CERTIFIED BY — (SIGNATURE)

CRIME INDICTED FOR & IND. NO.

CERTIFIED BY — (SIGNATURE)

CERTIFIED BY — (SIGNATURE)

DATE & PLEA ON ARRAIGNMENT

CERTIFIED BY — (SIGNATURE)

DATE PLEADED GUILTY TO

CERTIFIED BY — (SIGNATURE)

DATE OF TRIAL & VERDICT

CERTIFIED BY — (SIGNATURE)

DATE FINALLY DISPOSED OF BY MOTION

CERTIFIED BY — (SIGNATURE)

SENTENCE AND/OR REMARKS

CERTIFIED BY — (SIGNATURE)

POL 9-1010 WHITE — CENTRAL RECORDS CANARY — COMMAND PINK — ID GOLD — PROP BUFF — DAO BLUE — COURT

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

STATE OF NEW YORK
COUNTY OF SUFFOLK } SS:

I Hazel Denise Washington , [redacted]

do make the following Statement; I am 17 years old, born August 14, 1951 in Brooklyn, New York. I live with my mother Jean, my cousin Joseph Woodard and two brothers at 67 North Ronald Drive, Amityville, New York. My telephone number is 598-1324.

Sometime in September 1967 I met Randy Taylor while he was working at the ALL WEATHER DRIVE MOVIES, Sunrise Highway, Copiague, New York. I had a few dates with him where we go for rides in his car and a few times he came to my house and helped me with my school work.

Sometime at the end of March 1968 I met Randy Taylor at the All Weather Drive In Movie, Sunrise Highway, Copiague. This was in the evening after supper. After I met Randy we went to the Highway Inn in Roosevelt, New York. We stayed there a short time and then we went back to the All Weather Drive In Movie. When we got there the movie was over and Randy parked his car in the lot. We started kissing and petting. Randy pulled down his pants and I pulled down my slacks and underclothes. Randy and I had sexual intercourse. Randy had brought some foam Rubber and gave it to me to use. I used it in the car after we had had intercourse. Randy took me home then.

In April 1968 I missed my period and I went to Doctor Kopchynski in North Amityville. Doctor Kopchynski took several urine tests and told me that I was pregnant. He also gave me an internal examination. I have never had intercourse with anyone else so I know Randy was the father of this child and I told Randy that I was pregnant. Randy said he would take care of paying for the child but that when my mother found out she would kill him.

I have read the above statement in the presence of my mother and I swear that it is all true.

Sworn to before me this
2 day of September 1968

William Shea
Notary Public

Signed Hazel Denise Washington

Witness Mrs Jean Washington

Witness Diane Schroeder

70

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

STATE OF NEW YORK }
COUNTY OF SUFFOLK } SS:

I Hazel Denise Washington , [redacted]

do make the following statement; I am 17 years old, born August 14, 1951 in Brooklyn, New York. I live with my mother Jean, my cousin Joseph Woodard and two brothers at 67 North Ronald Drive, Amityville, New York. My telephone number is 598-1328.

Since March 1968 I have been having sexual intercourse with Randy Taylor at least once a week. We continued doing this until my seventeenth birthday. These incidents took place in different places in the County of Suffolk, New York.

I have read the above statement and I swear that it is all true.

Sworn to before me this
2 day of September 1968

William Shea
Notary Public

Signed Hazel Denise Washington

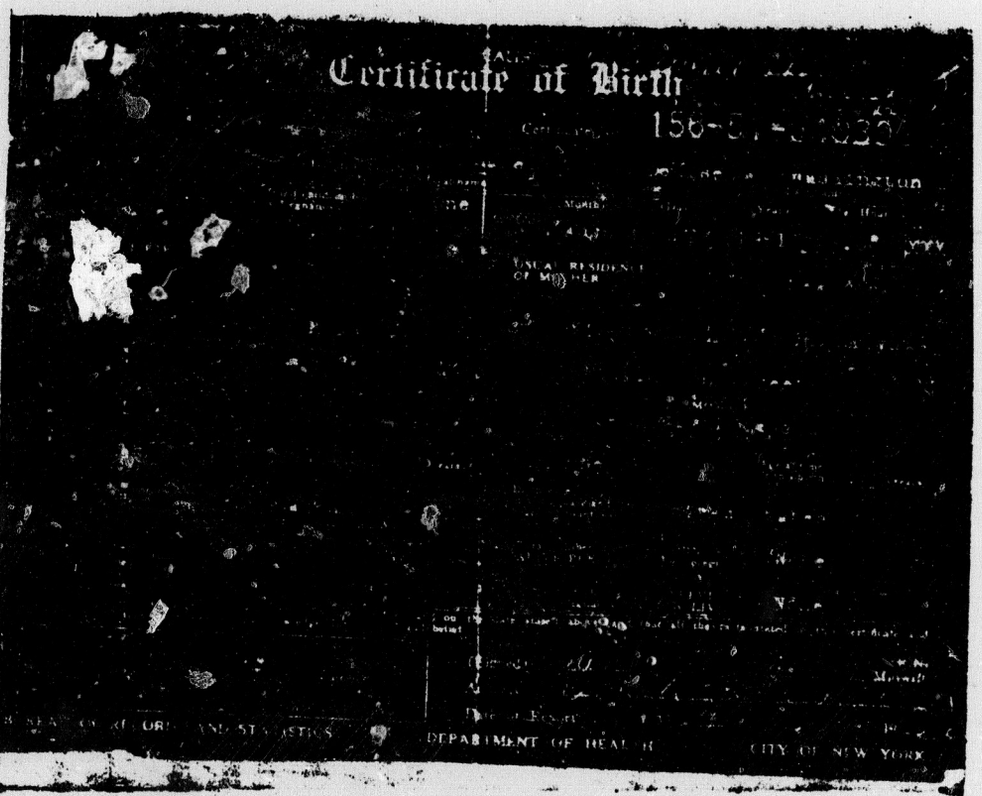
Witness Mary Jean M. Washington

Witness Diane Schroeder

70

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

SEP 15 1952



Certificate of Birth

DEPARTMENT OF HEALTH

CITY OF NEW YORK

CARL L. ERHARDT
Director of Bureau

BY

Borough Registrar

WARNING: DO NOT ACCEPT THIS TRANSCRIPT UNLESS THE RAISED SEAL OF THE DEPARTMENT OF HEALTH IS AFFIXED THEREON. THE REPRODUCTION OF THIS TRANSCRIPT IS PROHIBITED.

NOTICE: In issuing this transcript of the Record, the Department of Health of the City of New York does not certify to the truth of the statements made thereon as no inquiry as to the facts has been made by law.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

CO# 68-155536

ARREST#

COMMAND#

SQUAD#

Information

COUNTY OF SUFFOLK

DET. IN CUSTODY

hrs. days

DATE: From to

STATE OF NEW YORK
COUNTY OF SUFFOLK
DISTRICT COURT

Defendant's Name Randolph Taylor

No. and Street 2 Sylvan Street

Post Office Bay Shore

Date of Birth 11-19-38

BE IT REMEMBERED, That I, Willam E May (Detective)

residing in the Town of Babylon County of Suffolk N.Y.

now come before Presidng Judge Esq., a Judge of the District Court in the County of Suffolk, N. Y. and give information under oath as follows:

That the said defendant on the or about or in between March 18, 1968 and March 29, day of 19 68

at the Hamlet of Copiague in the Town of Babylon

County of Suffolk, N. Y. ~~at about~~ in the night time o'clock in the fore-after noon of said day, did commit the felony of Rape in the Third Degree, contrary to Penal Law, Section 130.25, subdivision 2.

against the person or property of the People of the State of New York by wrongfully, intentionally, knowingly, recklessly, with criminal negligence, in that he being 21 yearsold or more did engage in sexual intercourse with a female, namely Hazel Denise Washington, less than 17 years old, namely 16 years of age. This information is based on information and belief of the sworn depostion of Hazel Denise Washington, attached hereto and made a part hereof.

WHEREFORE, Your Informant prays that the depositions of this Informant, and any other witnesses, may be reduced to writing and duly subscribed and that a warrant be issued for the arrest of said accused, and that he be dealt with pursuant to the provisions of the Code of Criminal Procedure.

Sworn to before me, this 3
day of March, 1968

William E May
Complainant

Shield No. 285

DISTRICT COURT
SUFFOLK CO., N. Y.

Address of Complainant 1st Squad Dets. Telephone No. TU8-8031

Clerk .

D.A. 10

DC 119A

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

STATE OF NEW YORK
COUNTY OF SUFFOLK } SS:

I Hazel Denise Washington , [illegible]

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In April 1968 I missed my period and I went to Doctor Kopchynski in North Amityville. Doctor Kopchynski took several urine tests and told me that I was pregnant. He also gave me an internal examination. I have never had intercourse with anyone else so I knew Randy was the father of this child and I told Randy that I was pregnant. Randy said he would take care of paying for the child but that when my mother found out she would kill him.

I have read the above statement in the presence of my mother and I swear that it is all true.

Sworn to before me this
2 day of September 1968

William E May
Notary Public

WILLIAM E. MAY
NOTARY PUBLIC, State of New York
No. 52-7775
Qualified in Suffolk
Commission Expires 70

Signed Hazel Denise Washington

Witness Mrs Jean M Washington

Witness Diane Schneider

419a

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

DISTRICT COURT OF THE COUNTY OF SUFFOLK

4th DISTRICT

HELD AT Commack

The People of the State of New York

— against —

Dwight Taylor

Defendant

Before .....
Judge, District Court

of the County of Suffolk, Sitting as a Committing Magistrate.

Defendant arraigned ..... 19.....

The defendant immediately on being brought before the District Court Judge, was informed by said District Court Judge as follows:

1.) You are charged with the crime of .....

and the charge was distinctly read to said Defendant.

2.) You have the right to the aid of counsel in every stage of the proceedings, and before any further proceedings are had.

3.) Do you wish the aid of counsel? If you do, you will be allowed a reasonable time to send for counsel, and the examination will be adjourned for that purpose.

4.) If you cannot afford an attorney the court will assign one for you.

(C.C.P. 188, 189)

Answer .....

.....
Judge, District Court

Adj. to allow defendant to procure counsel ☑

Adj. to 9/4, 19 61 ☑

Adj. to ....., 19..... ☐

Adj. to ....., 19..... ☐

On the 4 day of Sept 19 68

Defendant (and Counsel) again appeared before the Court.

Defendant warned that upon conviction he is subject to different or additional punishment by reason of previous convictions, CCP Sec. 335-b. ☐

Do you demand examination or do you waive examination?

Answer, Defendant ..... examination.

Demand Exam Waived

.....
Judge, District Court

(C.C.P. 190, 191)

Held to bail pending examination in the sum of ..... Hundred Dollars.

Adj. to 9/12, 19 68 ☐

Adj. to ....., 19..... ☐

Adj. to ....., 19..... ☐

Adj. to 10/15, 19 68 ☐

(C.C.P. 194, 196, 197, 198)

Examination commenced .....

....., 19.....

Examination closed .....

....., 19.....

.....
Judge, District Court of the County of Suffolk.

Attorney for defendant .....

.....

Address .....

.....

Miscellaneous:

9/4/68 Deft. present with counsel & ptf

Mr. Cox Rep

9/12/68 Atty. Hartmen Atty. for deft. present Grand Jury relieved R.O.R.

10/15/68 Deft. present with Atty. Hartmen Adj. to 11/14/68 for Report of Deft.

(C.C.P. 207; Note C.C.P. 207)

PC117

ORDER

There being no sufficient cause to believe the within-named ..... guilty of the offense within mentioned, I order h.. ..... be held to answer.

.....
Judge, District Court of the County of Suffolk.

(C.C.P. 208, 209, 210, 212)

It appearing to me by the within depositions (and statements)

STRIKE OUT A or B BELOW

a.) That the offense therein mentioned has been committed.

b.) That the offense mentioned has not been committed but that the offense of ..... has been committed

and there is sufficient cause to believe the within named .....

guilty thereof, I order that ....he be held to answer the same and that ....he be admitted to bail in the sum of .....

and be committed to the Sheriff of the County of Suffolk until ....he give such bail.

Dated ....., 19.....

.....
Judge, District Court of the County of Suffolk.

I have admitted the defendant to bail to answer by the undertaking hereto annexed.

Dated ....., 19.....

.....
Judge, District Court of the County of Suffolk.

(C.C.P. 210)

At the time the crime was committed defendant had (not) attained an age of nineteen years: at such time he was ..... years of age.

11/14/68 Def. not present Atty. present

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION 7/31.

Taylor told Clarke he met Denise in a bar and didn't know she was 16-

He told Dennis that he was a family friend and that she was always kissing him and that he don't both were alone in the house and that was when it happened.

When Randy was in my office with Norowski he stated that he had intercourse with the girl on her 14 or 15 birthday at the Starlight Motel Bob. and again on 16 Aug at the Plaza & Terrace when she was 17 no pregnant! also that the father of the child was on her mom that she spent some nights with and that he left for San Francisco.

421a

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

Rape Case charge.

3 September 1968

TO: Mr. Shapiro

FROM: Chief Landers

SUBJECT: Patrolman Randolph Taylor, Shield #189

Patrolman Randolph Taylor of this department was arrested by Suffolk County Police for the felony of rape (statutory), at about 11:55 P.M., September 2, 1968.

Patrolman Taylor was advised by the undersigned that he would be suspended without pay effective one minute after midnight September 3, 1968 because of his arrest.

His shield and service revolver are stored in the Quartermaster's armory.

N. T. Landers - Chief

NTL:lb

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

11 September 1968

Ptl. Randolph Taylor
2 Sylvan Street
N. Bay Shore, New York 11706

Dear Patrolman Taylor:

Charges of misconduct and failure to comply with the Rules and Regulations of the Traffic and Park Patrol are hereby preferred against you.

Specification 1

While assigned to Belmont Lake State Park during an approximate period extending from March of 1968 to 26 August 1968, you failed to comply with Article 1, Rule 1, Paragraphs A and C on page 2 of the Rules and Regulations of the Traffic and Park Patrol.

To wit:

You violated Article IV, Rule 1, Paragraphs A, C and G on page 10 by engaging in sexual intercourse with a sixteen year old unmarried female at various motels and at various other locations.

Specification 2

While assigned to Belmont Lake State Park during the period of time mentioned in Specification 1, you failed to comply with Article 1, Rule 1, Paragraphs A and C on page 2 of the Rules and Regulations of the Traffic and Park Patrol.

To wit:

You violated Article IV, Rule 1, Paragraphs C, D and G on page 10 by having a sixteen year old unmarried female ride with you in a Parkway Police patrol car while you were on duty, for purposes other than a police investigation.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

Ptl. Randolph Taylor **11 September 1968**

Specification 3

While assigned to Belmont Lake State Park during an approximate period extending from March of 1968 to 26 August 1968, you failed to comply with Article 1, Rule 1, Paragraphs A and C on page 2 of the Rules and Regulations of the Traffic and Park Patrol.

To wit:

You violated Article IV, Rule 1, Paragraphs C and G on page 10 by engaging in sexual intercourse with a female other than your wife, at various motels and at various other locations.

You are given until September 23, 1968 to make and file a written answer or explanation of these charges. If you are found guilty of the above charges, you will be subject to dismissal from your position, a fine not exceeding $100.00, suspension from your position without pay for a period not exceeding two months, or a reprimand, as provided within Section 75 of the Civil Service Law.

A hearing on these charges will be held on the 30th day of September 1968 at 10 A.M. at Administration Headquarters, Belmont Lake State Park, Babylon, L. I., New York.

Very truly yours,

Assistant General Manager

CRB:lb

The Undersigned served the Original of these charges on Ptl R. Taylor at his residence on 11 Sept 1968 at 1015 hrs.

F. A. C. Fields

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

12 September 1968

TO: Mr. Dougherty

FROM: Captain McConnin

SUBJECT: Patrolman R. Taylor

Patrolman Taylor appeared at his Felony Hearing this morning accompanied by Denise, and explained to the Presiding Judge that he was in the process of changing his attorney to Kenneth Rohl of Babylon (he was not present today) instead of Mr. Hartman.

Apparently notice of intentions to appear were made by both attorneys. The presiding Judge stated that Mr. Hartman would have to appear in Court and withdraw his stated intention of defending Taylor. Subsequently, Mr. Hartman did appear and withdrew his intention. The presiding Judge reluctantly gave Taylor an adjournment to 26 September.

Sergeant Gilsenan learned that Taylor's father will defray the cost of Mr. Rohl's fees. The appearance of Denise and Randy together indicated to those present that she was going to make a statement along the lines of Taylor not being the father of the child.

If this be so it would have no bearing on the charge because previously chaste character has no bearing on the element of the crime because she was a minor at the time.

I shall supply the name of the Presiding Judge at a later date.

F. G. McConnin - Captain

FGMcC:lb

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

STATE OF NEW YORK

SPP-106-68
Supplemental Report

LONG ISLAND STATE PARK COMMISSION
STATE PARKWAY POLICE

SPECIAL REPORT

STATION Babylon Headquarters N. Y.

13 September 19 68

Subject: Departmental Investigation
(Ptl. RANDOLPH TAYLOR #189)

To: Commanding Officer, Babylon, N. Y.

Relative and in addition to Preliminary Report as submitted by Lt. A. FECHER.

7. On 23 August 1968 at 0845 hours, Mrs. JEAN WASHINGTON at Babylon Headquarters and interviewed by Capt. F. MC CONNIN regarding complaint against Ptl. RANDOLPH TAYLOR #189. Deponent advised at this time to start investigation.

8. Mrs. WASHINGTON stated that her daughter DENISE was at this time in Chicago and would be in New York on Monday 26 August 1968. Deponent advised Mrs. WASHINGTON to be at Babylon Headquarters on said date with her daughter to make a formal complaint against Ptl. TAYLOR.

9. On 23 August 1968 at 0955 hours, Ptl. RANDOLPH TAYLOR at Babylon Headquarters requesting to see Captain MC CONNIN. Deponent called into Capt Mc CONNIN's office and Ptl. TAYLOR stated of his own free will that on the 14th and 16th of August 1968 he had intercourse with DENISE WASHINGTON. The 14th of August was at the STARLIGHT MOTEL, Babylon, N. Y. and on the 16th of August was at the PLOW & HARROW, Route 109, E. Farmingdale, N. Y. Ptl. TAYLOR stated that he had signed in at above motels under an alias (unknown) and then DENISE who was waiting outside in his car would sneak into the motel. Ptl. TAYLOR was advised that at this time there was no formal complaint against him as the complainant is in Chicago.

10. On 26 August 1968 at 1000 hours, Mrs. JEAN WASHINGTON and her daughter DENISE at Babylon Headquarters for further questioning, which occurred in the office of Capt. MC CONNIN. Present at above stated time and place were Mrs. JEAN WASHINGTON, DENISE WASHINGTON, Capt. MC CONNIN, Det. Sgt. J. P. GILSENAN #25, deponent, and Mrs. L. BRUNNER, stenographer. Written statement taken from DENISE WASHINGTON and attached hereto.

11. Due to the fact that the act of rape according to complainant, occurred in Suffolk County, all above information was turned over to Lt. J. BISCARDI and Det. W. MAY, of the 1st Sqd. P. D. Suffolk County. Further investigation to be conducted by Suffolk County for any possible criminal charges against Ptl. TAYLOR.

12. On 30 August 1968 at approximately 1330 hours, Ptl. R. TAYLOR called Det. MAY, Suffolk County P. D. and stated he was going to take his own life by taking sleeping pills. Sgt. PANDOLF and Ptl. J. MEHLER #874 responded to Ptl. TAYLOR's home and transported him to Southside Hospital in Bay Shore, N. Y. It was learned that Ptl. TAYLOR had taken an overdose of mild tranquilizers known as "SLEEP TONIGHT". Sgt. PANDOLF took possession of Ptl. TAYLOR's off-duty weapon, a .38 cal. S&W revolver, serial #C812998. Said revolver was turned over to Det. B. AVERSANO #105, this department at 1445 hours, date, vicinity Southside Hospital. Det. COBHAM was also present at this time.

13. On 30 August 1968 at 1530 hours Det. AVERSANO & COBHAM to Ptl. TAYLOR's home and picked up his departmental Shield #189 and departmental service revolver which is a Smith & Wesson, .38 cal. serial #14241. Also picked up was a gunbelt, two pairs of handcuffs, (chain and regular), one night stick, pocket knife, one MOSSBERG 12 gauge shotgun #500A, (17) 12 gauge shotgun shells, and 30 cartridges of .38 special. Above turned over to this department's Quartermaster.

14. On 2 September 1968 at approximately 2330 hours, Det. Sgt. P. MARQUARDT #351 and Det. A. GOLDSCHMIDT #321, 1st Sqd. P. D. Suffolk County at Babylon Headquarters and took Ptl. RANDOLPH TAYLOR into custody on charge of Sec. 130.25 of the Penal Law - Rape in the Third Degree.

15. Case open pending further investigation.

Respectfully submitted,

W. Norowski

Det. W. Norowski #104

M.B.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

LONG ISLAND STATE PARK COMMISSION

ADMINISTRATION HEADQUARTERS

BABYLON, N. Y.

13 September 1968

SUBJECT: Attempted Suicide (Ptl. RANDOLPH TAYLOR)

TO: Commanding Officer, Babylon, N. Y.

On 30 August 1968 at about 1430 hours deponent and Det. COBHAM #106 were advised by Capt. MC CONNIN to respond to Southside Hospital Emergency Room and meet a Suffolk County patrol in reference to Ptl. RANDOLPH TAYLOR, who had taken an overdose of sleeping pills.

Deponent and Det. COBHAM at scene at about 1445 hours and were met outside of Southside Hospital in northside parking field by Sgt. PANDOLF #265 and Ptl. J. MELHLER #874 of Suffok County Police Department, who had Ptl. TAYLOR in rear of their Police vehicle and stated to deponent that Det. MAY of 1st Sqd. received a phone call from Ptl. TAYLOR at about 1330 hours stating he was going to take his own life by taking sleeping pills. Sgt. PANDOLF #265 and Ptl. MELHLER #874 responded to home of Ptl. TAYLOR at 2 Sylvan St., Bay Shore, N. Y. and transported subject to Southside Hospital and treated by house doctor Dr. ANTE. It was learned that Ptl. TAYLOR had taken a bottle of mild tranquilizers known as "SLEEP TONITE" Ptl. TAYLOR released from hospital and advised to see Dr. VENDERSKY. Sgt. PANDOLF took possession of Ptl. TAYLOR's personal weapon at scene and turned same over to deponent - a 2" S&W .38 cal. revolver, Ser. #C812998.

Deponent and Suffolk County Police escorted Ptl. TAYLOR to his home at 2 Sylvan Street, Bay Shore, N. Y. where he was advised by deponent to turn over his Shield #189 and his service revolver #14241 a .38 cal. S&W, his gunbelt with pair of handcuffs, night stick and 38 cartridges of 38 Special. Deponent also received from Sgt. PANDOLF #265, a suicide note written by Ptl. TAYLOR to his wife and attached hereto. Ptl. TAYLOR was advised by deponent not to report for duty until Monday 2 September 1968 and to report to Captain MC CONNIN at that time. On 30 August 1968 Ptl. TAYLOR was further advised by Det. PROEBSTER #103 that he wasn't to report back for duty until he had been approved by hospital doctor who treated him, stating he was in good physical and mental health and also to report to Dr. VARMUS, 95 N. Main Street, Freeport, N. Y. for final approval before reporting for duty.

Weapons and gun belt secured at quartermaster and receipt obtained.

Respectfully submitted,

B. L. Aversano

B. L. Aversano #105
Det.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

Dear Kit:

I'M NOT the Father I Am innocent
My Glourious Parkway Police are going
to be my pallbearers.
take Care of the kids you'll get about $100,000.
they will be good Cops when they grow up.
dont let them go on that stinking Parkway Police.
Good-bye

Randy

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

SPP-106-1968
Final Report

STATE OF NEW YORK
LONG ISLAND STATE PARK COMMISSION
STATE PARKWAY POLICE

SPECIAL REPORT

STATION Babylon Headquarters N. Y.

8 May 19 69

Subject: Departmental Investigation
(Ptl. RANDOLPH TAYLOR #189)

To: Commanding Officer, Babylon, N. Y.

(Relative and in addition to Preliminary Report as submitted by Lt. A. FECHER and Supplemental Report as submitted by deponent.)

16 On 17 December 1968, 1st Sqd. P. D. Suffolk County presented the case of Rape in the Third Deg., Sec. 130:25 of the P. L. of the State of New York against defendant RANDOLPH TAYLOR to the Grand Jury of Suffolk County, Riverhead, N. Y.

17. On 23 December 1968, the Suffolk County Grand Jury failed to return an indictment against RANDOLPH TAYLOR for the above stated crime. Charge dismissed before Hon. Judge G. McINERNY, Suffolk County Court.

18. Departmental charges against Ptl. RANDOLPH TAYLOR resulted in suspension without pay between the dates of 3 Sept. 1968 and 26 Sept. 1968.

19. Case closed.

Respectfully submitted,

W. NOROWSKI #104 - Det.

RECEIVED
MAY 20 1969
L. I. STATE PARKWAY POLICE
BABYLON, N. Y.

SPP - 216

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

POLICE DEPARTMENT — COUNTY OF SUFFOLK

CENTRAL COMPLAINT NO.	FIELD REPORT	PCT. OF OCC.	SECTOR
68-161935		3	315

INCIDENT	GRID	CAR NO.
AIDED CASE (OVERDOSE)	16-124	370

CODE	DAY OF OCC.	DATE OF OCC.	TIME OCC.
	FRI.	8-30-68	1330

COMPLAINANT OR VICTIM	DOB	
RANDOLF TAYLOR	11-19-38	☒ - M ☐ - F

ADDRESS	TEL.
2 SYLVAN ST - BAY SHORE	666 3719

PLACE OF OCCURRENCE: SAME AS ABOVE

DATE OF REPORT	TIME OUT	TIME IN	
8-30-68	1336	1500	☐ - PERSON ☐ - SIGHT ☒ - RADIO ☐ - PRECINCT

TOUR	FOUNDED	REPORT TO FOLLOW	COMMAND
8-4	YES	NONE	—

DETAILS: AT APPROX. 1330 HRS. ABOVE SUBJECT CALLED DET. MAY - 1ST SQUAD DETECTIVES - AND STATED HE WAS GOING TO TAKE HIS OWN LIFE BY TAKING SLEEPING PILLS. THE UNDERSIGNED AND UNIT 335, SGT. RANDOLF RESPONDED AND TRANSPORTED SUBJECT TO SOUTHSIDE HOSPITAL. IT WAS LEARNED THAT THE SUBJECT HAD TAKEN A BOTTLE OF MIL TRANQUILIZERS KNOWN AS "SLEEP TONITE" SGT. RANDOLF TOOK POSSESSION OF THE SUBJECTS PERSONAL EFFECTS. SUBJECT IS A STATE EMPLOYEE AND HIS EMPLOYER RESPONDED

ACTIVE ☐ INACTIVE ☐ — CLEARED BY ARREST ☐ EXCEPTIONALLY CLEARED ☐

POLICE OFFICER	COMMAND	SUPERVISOR
[illegible] #874-413		

FORM UR-12

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

POLICE DEPARTMENT — COUNTY OF SUFFOLK

CENTRAL COMPLAINT NO	FIELD REPORT	PCT. OF OCC.	SECTOR
INCIDENT		GRID	CAR NO.
CODE	DAY OF OCC.	DATE OF OCC.	TIME OCC.
COMPLAINANT OR VICTIM		DOB	☐ - M ☐ - F
ADDRESS			TEL.
PLACE OF OCCURRENCE			
DATE OF REPORT	TIME OUT	TIME IN	☐ - PERSON ☐ - SIGHT ☐ - RADIO ☐ - PRECINCT
TOUR 2	FOUNDED	REPORT TO FOLLOW	COMMAND

DETAILS

8-30-68

RECD FROM SGT RANDOLF #265 OF S.C.P.D. (1) 2" S+W. 38 CAL. REVOLVER SER# C812998 - PISTOL PERSONAL OFF-DUTY WEAPON OF ATL. RANDOLF TAYLOR OF NYSP POLICE - GUN TURN OVER AT 1445 HRS AT # 2 SYLVAN ST. B.S.

ACTIVE ☐ INACTIVE ☐ — CLEARED BY ARREST ☐ EXCEPTIONALLY CLEARED ☐

POLICE OFFICER: Det B. L. Peterson 2105 — COMMAND — SUPERVISOR: Lt Leary

FORM UR-12

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

CERTIFICATE OF HEALTH

Date 8/31/68

This is to certify that

Randolph Taylor

is free of any contagious or infectious disease and has my permission to attend school.

fit to return to work -

Dr. [signature]

FORM NO. 116 PROFESSIONAL PRINTING CO., INC., NEW HYDE PARK, N. Y.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

MOHAWK 6-6461

REG. NO. 32038

MAX BENDERSKY, M. D.

HOWELLS ROAD & MANATUCK BLVD.

BRIGHTWATERS, N. Y. 11718

NAME [illegible] AGE

ADDRESS [illegible] DATE 8-31-69

℞

N Byles

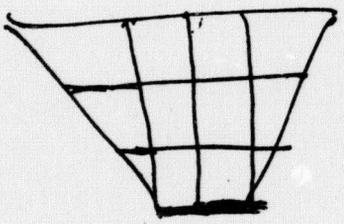
Above patient is physically capable of work full time at his regular occupation.

D Max Bendersky

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

M06-8780 3rd Pct.
666-8780 -

Sgt. TROTI



M06-6900 V.S.

Dr On
Codeine Morphine -
anti-histamine
not barbiturate

Uniform Sgt PANDOLF 3rd Pct
brought Randy to V.S. about 2:00 P.
Thursday 30 Aug. Randy had
his personal gun on a table with the
bullet out + close by.
Treated at VS - Codeine SAVAGE-
stomach pumped + released. Pill, not
dangerous anti histamine - not barbiate

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

Pat KEEHNER :
3rd Pat Misdemeanor
Sgd Sheff. P.D. re
Taylor reporting theft
of a personal art col
belong. from Kim Kane
Oct 4th - last saw it
Oct 6 reported it
missing.

Suspect Wm. Mills a
relative who was a house
guest who has a gun
OREP

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

record

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

COPY

COMMISSIONERS
PERRY B. DURYEA, JR.
PRESIDENT
JOHN M. SCHIFF
HAROLD J. PRYOR
A. HOLLY PATTERSON
ROBERT WINTHROP
CECIL L. HALL
HENRY L. DIAMOND

STATE OF NEW YORK

LONG ISLAND STATE PARK COMMISSION
BELMONT LAKE STATE PARK
BABYLON, L. I., N. Y. 11702
516 MOHAWK 9-1000

SIDNEY M. SHAPIRO
CHIEF ENGINEER AND
GENERAL MANAGER
CHESTER R. BLAKELOCK
ASSISTANT GENERAL MANAGER
VINCENT LEITCH
ADMINISTRATIVE OFFICER
FRANK P. CHAMP
GENERAL SUPERINTENDENT
JOHN J. BONACUM
EXECUTIVE SECRETARY

~~September 24, 1968~~

Kenneth K. Rohl, Esq.
42 Fire Island Avenue
Babylon, New York 11702

Dear Mr. Rohl:

DEFENDANT

Re: Patrolman Randolph Taylor
Disciplinary Proceedings

This will confirm our conversation in which you stated that you are the [attorney for Patrolman Randolph Taylor] in the disciplinary proceedings on charges contained in letter dated ~~September 11, 1968~~ JULY 14, 1971 from the Long Island State Park Commission to Patrolman Taylor.

JULY 29 1971

It will also confirm that the hearing on said charges, now set for ~~September 30, 1968~~, is adjourned and will be held on a date to be fixed on seven days' written notice to you or Patrolman Taylor.

Pending the hearing and determination of the said charges, the Park Commission grants Patrolman Taylor a leave of absence from duty, without pay, commencing ~~September 26, 1968.~~ JULY 29, 1971

Please indicate your agreement on the enclosed copy and return it.

Very truly yours,

G. Frank Doughterty

Attorney

Agreed to and accepted

Kenneth Rohl

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

15 January 1969

TO: Mr. Shapiro

FROM: Chief Landers

SUBJECT: Disciplinary Action - Ptl. Randolph Taylor - Shield No. 189

Attached is file of charges preferred against Patrolman Randolph Taylor pursuant to letter and specifications dated January 15, 1969.

Patrolman Taylor entered a signed written waiver of hearing and a plea of guilty to the charge of permitting an unauthorized person to ride with him in a Parkway Police patrol car while he was on duty, for purposes other than a police investigation. No matters of mitigation, extenuation or defense were submitted.

The Patrolman's record shows, among other things, that in August 1968 he pleaded guilty to charges of failing to report for duty and also reporting late for a tour of duty and was fined $25.00.

It is recommended that, as punishment, Patrolman Taylor be suspended from duty, without pay, from September 3, 1968 to September 26, 1968, the latter date being the commencement of his requested leave of absence from duty without pay.

Respectfully submitted

N. T. Landers - Chief
Police Department

NTL/fb

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

15 January 1969

TO: Mr. Shapiro

FROM: Chief Landers

SUBJECT: Disciplinary Action - Pfl. Randolph Taylor - Shield No. 109

Attached is file of charges preferred against Patrolman Randolph Taylor pursuant to letter and specifications dated January 15, 1969.

Patrolman Taylor entered a signed written waiver of hearing and a plea of guilty to the charge of permitting an unauthorized person to ride with him in a Fleetwood Police patrol car while he was on duty, for purposes other than a police investigation. No matters of mitigation, extenuation or defense were submitted.

The Patrolman's record shows, among other things, that in August 1968 he pleaded guilty to charges of failing to report for duty and also reporting late for a tour of duty and was fined $25.00.

It is recommended that, as punishment, Patrolman Taylor be suspended from duty, without pay, from September 3, 1968 to September 26, 1968, the latter date being the commencement of his requested leave of absence from duty without pay.

Respectfully submitted

N. T. Landers - Chief
Police Department

NTL/fb

2-22-68 25M (P95697)

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

COPY

cc: Mr. Kenneth Rohl
Mr. Dougherty
Mr. Leitch
Mr. Lacy
Chief Landers
Mr. Gross

LONG ISLAND STATE PARK COMMISSION
BELMONT LAKE STATE PARK
BABYLON, LONG ISLAND 11702

January 17, 1969

Department of Civil Service
The State Campus
Albany, New York 12226

Re: Disciplinary Action
Item 2905 - Randolph Taylor

Gentlemen:

In accordance with Section 75 of the Civil Service Law, Randolph Taylor has had charges preferred against him and has pleaded guilty to these charges. He was suspended without pay for the period September 3, 1968 to September 26, 1968, on which date he went on leave of absence without pay.

Enclosed are the following records:

1. Letters to Patrolman Taylor dated September 11, 1968, and January 15, 1969.

2. Letter appointing M. T. Landers Hearing Officer dated January 14, 1969.

3. Memorandum from Ptl. Taylor acknowledging receipt of letter of January 15 and pleading guilty and waiving hearing.

4. Memorandum from Chief Landers to Mr. Shapiro dated January 15, 1969, recommending that Ptl. Taylor be suspended from duty without pay from September 3, 1968, to September 26, 1968.

5. Memorandum from Mr. Shapiro to Mr. Leitch dated January 17, 1969, approving the suspension.

6. Copy of letter to Ptl. Taylor dated January 17, 1969, advising him regarding the suspension.

Very truly yours,

Administrative Officer

VL:es
Encl.

2-22-60 25M (P66657)

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

COPY

cc: Department of Civil Service
Mr. Kenneth Rohl
Mr. Dougherty
Mr. Leitch
Chief Landers
Mr. Lacy
Mr. Gross

LONG ISLAND STATE PARK COMMISSION
BELMONT LAKE STATE PARK
BABYLON, LONG ISLAND 11702

[redacted]

January 27, 1960

Ptl. Randolph Taylor
2 Sylvan Street
North Bay Shore, N. Y. 11706

Dear Patrolman Taylor:

With further reference to our letter of January 15, preferring charges against you, to which you pleaded guilty, please be advised that you were suspended without pay for the period September 3, 1959, to September 26, 1959, on which date your leave of absence without pay commenced.

We are sure that this Commission can count on your cooperation in performing your duties as a Traffic and Park Officer.

Very truly yours,

General Manager

RHR:ce

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

6 February, 1970

SUBJECT: RANDOLPH TAYLOR

TO: Commanding Officer: Babylon, New York

RANDOLPH TAYLOR, declined to accept a position as patrolman with the Suffolk County Police Department, 8 AUGUST, 1969. Reason given by him was insufficient money.

CREDIT and FINANCIAL RECORD

Subject applied for loans at the following banks:

FRANKLIN NATIONAL BANK ..... 9/13/66 ... REJECTED-- POOR RECORD

NASSAU TRUST ..... 10/25/66... REJECTED

FIRST NATIONAL CITY ..... 12/09/66... REJECTED-- OVERLOADED

SECURITY NATIONAL ..... 2/04/69 ... REJECTED

BENEFICIAL FINANCE COMPANY
189-23 Linden Blvd., St. Albans, N.Y.C.
Mr. CHRISMAN, MGR.

Personal loan granted in September 1969, in the amount of $968--. Payments not kept up to date and checks of subject not honored.

MILITARY RECORD

Received Honorable Discharge from United State Air Force 9 OCTOBER, 1962. Received summary court martial 23 MAY, 1957, for failure to go at time prescribed to place assigned.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

SUBJECT: RANDOLPH TAYLOR

EMPLOYMENT RECORD:

From 3/21/60 TO 4/12/61
HOLMES ELECTRIC
370 SEVENTH AVENUE, N.Y.C.

POOR ATTENDANCE

From 10/62 TO 2/64
REPUBLIC AVIATION

Excessive absenteeism and tardiness. Warned.

From 2/17/64 TO 9/16/64

PINKERTON GUARD SERVICE ==== HENRY NEVILL, V.P.

5/29/64 ..... Off Post.
5/30/64 ..... Suspended for violation of 5/29/64/
6/06/64 ..... Late for roll call.
6/07/64 ..... AWOL
6/13/64 ..... AWOL
6/21/64 ..... AWOL
6/22/64 ..... AWOL
9/06/64 ..... AWOL
7/09/64 ..... Late for roll call.
7/18/64 ..... Late for roll call.
6/11/64 ..... Improper Uniform.
6/18/64 ..... Unauthorized leave. Insubordinate.
9/16/64 ..... POOR ATTENDANCE --- POOR WORK RECORD --- DISCIPLINARY PROBLEM --- DISMISSED.....

From 6/67 to 7/68

ALL WEATHER DRIVE-IN
COPIAGUE, NEW YORK

POOR WORK RECORD. UNDEPENDABLE PERSON.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

SUBJECT: RANDOLPH TAYLOR

MEDICAL RECORD

3/03/68 ----- Injured left hand at Police Booth. Slipped on ice.

8/15/68 ----- Working as life-guard at BRYAN LAKE, OAKDALE, New York, injured his back.

8/30/68 ----- Overdose of sleeping pills.

4/26/69 ----- Injured back in A/A.

MISCELLANY

On Civil Service application, question #6, he answered "NO", if ever discharged from employment.

On questionnaire, from Suffolk County P.D., question #16, he did not indicate ever being discharged.

Respectfully submitted,

John R. Proebster

John R. Proebster
Det. #103

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

TAYLOR, RANDOLPH

ENLISTED
12 May 1966 (Perm.)

Reinstated 2 Jan 69

TERMINATED
Susp w/o pay
3 Sept 68
Resigned 7 July 1971

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

STATE OF NEW YORK
LONG ISLAND STATE PARK COMMISSION
STATE PARKWAY POLICE

#3912
COMPLAINT

COMPLAINANT RHEVA MORRIS AGE

ADDRESS 10 CLENT ROAD, GREAT NECK, NEW YORK PHONE TA 6 9856

NATURE OF COMPLAINT OR NAME OF CRIME CRIMINAL MISCHIEF

COMPLAINT REC'D AT FIELD #6 JONES BEACH STATE PARK BY PTL. JAMES RASO #146

DATE 02 JULY 1971 TIME 4:00PM ASSIGNMENT PTL. JAMES RASO #146

Give below complete details of complaint; correct names of suspects or witnesses; accurate descriptions of persons or property missing.

NATURE OF COMPLAINT

1. Complainant stated that she parked her vehicle in Field #6, Jones Beach State Park, Wantagh, NY, at approximatoly 12:15 PM, date, a 1969 Pontiac, NY Reg. #963J LB. Upon returning to the vehicle complainant found that three (3) of the tires were flat.

2. Witness at scene, Linda Heller, age #24, of 1410 EGGERT PLACE, FAR ROCKAWAY, NY, advised the complainant that the vehicle tires had been punctured by a Police officer.

ACTION TAKEN

1. Sgt. Faber, Det. Norowski and Sgt. Gilsenan at scene. Pictures taken.

2. Statements and future information to be investigated/obtained by Sgt. Gilsenan.

RESPECTFULLY SUBMITTED,

Ptl James Raso

PTL. JAMES RASO #146

[redacted]

SPP - 217

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

STATE OF NEW YORK
LONG ISLAND STATE PARK COMMISSION
STATE PARKWAY POLICE
SPECIAL REPORT

STATION Jones Beach N. Y.
2 July 19 71

Subject: Incident in Fld #6

To: Commanding Officer, Babylon, N.Y.

The undersigned entered Parking field #6 at 1225 hrs. to post a seasonal patrolman, upon entering field, UNKNOWN state worker advised undersigned that a female subject had jumped the curb and enter field through exit drive. Field was filled at this time. State worker showed the undersigned where subject was [redacted] located on beach. The subject was advised by the state worker that a Policeman wanted to speak to her in the parking lot. She stated she didn't have time to talk to cops. The undersigned issued a parking tag to another vehicle illegally parked in field which was requested by a seasonal patrolman and departed field at 1231 hrs.

Respectfully Submitted
L. Taylor #189

READ BY
Sgt. [illegible]
J Bell 1/4

SPP - 216

[illegible] 13/1

B. I. STATE PARKWAY POLICE
BABYLON, N. Y.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

Jones Beach Station
2 July 1971 - 1750 hrs.

My name is Linda Heller, age 24, and I reside at 1410 Eggert Pl. Far Rockaway, New York, my phone number is area code 212-337-5905. I reside at said address with my 3 year old daughter, Lisa.

On 2 July 1971, at approxiamately 11:00AM, I left Far Rockaway for Jones Beach State Park in my fiancee's car. Also in the car was my three brothers and my daughter. My fiancee, at this time I would rather not disclose his identification.

We arrived at Jones Beach State Park at about 12:30PM and parked the car in parking field #6. We parked around the center of the field and towards the west end of this field.

All of us got out of the car and my fiancee was carrying my daughter. My brothers, who are all small children were walking. As I was leaving I saw a Police Car which pulled up behind our car and stopped. I walked back to my car with my three brothers because I thought something was wrong with my car.

The police officer, who is about the same height as I am, which is approximately 5' 11", was Negro, and he was wearing sunglasses. He got out of the police car and walked around a car I recognized as a Pontiac LeMans. When this police officer alighted from his vehicle he had in his hand something red, about a foot long, and a sharp point on the end. I noticed he had three of these articles in one hand, and one in the other hand. I thought they were large firecrackers.

At this time I was about five or six feet away from him. He walked around this Pontiac Lemans and said in a loud voice " This is efficiency ". I then saw him push the pointed part of the articles, which were in his hand into the whitewalls of the right front and right rear tires. I heard air coming from these tires. I couldn't believe my eyes at what this police officer had done. He saw me starring at him & got back in the car

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

2 (continued)

and drove away.

Prior to this Police Officer driving away I noticed the number 24-70 on the right hand side of the car. I would like to add that when he pulled up to this vehicle there were two people in the back seat. I do not know who they were as I didn't pay too much attention to them. They also were in the car when he left.

I then walked to the East Bathouse and wanted to go swimming in the pool but didn't have a bathing cap, so I went back to my car by myself to get some money for a bathing cap. My fiancee, three brothers, and daughter stayed at the Bathouse.

When I returned to my car I noticed the tires on the Pontiac LeMans were about half flat, and the car was tilting to the right. I got the money out of my fiancee's car and went back to the Bathouse. I wanted to talk to a Police Officer at this time but my fiancee advised me against it.

We then went swimming for about 40 minutes and then all of us went back to my fiancee's car. We moved it to the east part of the parking field because we were afraid that this Police Officer might come back and do the same to our car. We then went into the picnic area of the field and had a barbecue. I didn't bother anymore about the Pontiac with the punctured tires until one of my brothers had past the car and then came back and told me that there were two Ld women standing by the car with the flat tires. I then went over to these people and told them what I saw. There were Police Officers at the scene when I arrived and I told them also of what I had seen.

The above statement is true to the best of my knowledge and belief.

Witnesses:
Det. W. Sowinski #104
Sgt. James A Gilsenan

Linda Heller

LINDA HELLER

1410-Eggert Pl. Far Rockaway, NY

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

Jones Beach Station
3 July 1971 - 1120 hrs.

My name is Richard Marshall, age #19, and I reside at 1585 Little Neck Avenue, N. Bellmore, NY, with my parents, Donald and Marie Marshall, also with my sisters, Sue and Patricia.

I am employed as an attendant for the LISPC and work at Jones Beach. My badge is #882. This is my third summer working as an attendant for the LISPC.

On 02 JULY 71, at approximately 1210 P.M., I was stationed on traffic in front of Parking Field #6. The parking field was full and we didn't let anyone in.

A car came along with two women in it and the fellow that was with me, Ken Zeitler, yelled to me not to let the car in. I was walking across the entrance behind the chain. This car then started to come into the field through the exit drive. There is no chain on the exit drive. I started to run diagonally ahead of this car so I could stop it and talk to her. At the time I approached the car in front of the left front bumper, I had to step aside quickly to avoid being hit. This car was traveling slowly and I put my arm on the front and leaned forward to talk to her. She then accelerated and entered the field. My hand flew off the door.

I then memorized her license plate and car color which was 9635 LB, (NY), and the car looked dark brown. I ran over to the zone office and asked both patrolmen who were in the Zone Office if they could help me. They said that they didn't have any summonses and to call the Barracks which I did on ext. #264.

Ptl. D. Kast answered at the Barracks. I requested a patrol car to Fld. #6 to issue a summons to a woman driver who almost ran me over and drove through the exit. Ptl. Kast said that none were available at that time.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

I then left the Zone Office and started to walk west towards the Life Guard Shack. I saw these two women walking towards the Ocean. I called to them and asked if they would wait a minute. They just kept walking and ignored me. I then ran up to these women and walked along side of them requesting them to wait for a patrolman who would speak to them. She said something like, "This is a lot of nonsense, there were four open spaces next to her car". Also, "She couldn't be bothered". They then just kept walking. I then walked to the rear of the field to locate their car.

It took me about two minutes to find it. It was in the third row from the rear of the field about twenty cars from the west end of the lot. I looked at the car, the plate and noted the make which was a Pontiac, LeMans with a white convertible top.

I then walked back to the Zone Office and I noticed a Police Car coming into the Field. He then pulled up to the Zone Office and got out of his car. He then talked to another Police Officer who was on foot.

I went up to this Police Officer who was Negro, about 6'0" tall, slim, Afro hair cut, mustache and wearing sunglasses. I told him what happened and asked if he could help me. He said, "Show me where the lady is".

I, and another patrolman who I don't know, got into the Police Car. I got in the front and the Patrolman got in the rear. We drove towards the Life Guard Shack which is on the west side and in front of the field.

W e both got out of the car and the Patrolman that was in the rear of the car stayed there. We both walked to the boardwalk and I indicated to the Policeman where the two women were situated. The Patrolman stated, "i don't feel like going down there", and asked me if I would go down and send them up. I walked to where they were sitting in two beach chairs and asked the operator of the car, "Will she please go up to the boardwalk

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

as a Patrolman would like to speak to her?" She ignored me. The older one of the two, said, "If he wants to see me, let him come down here", and then said, "I don't want to see him." I said "Thank You", and walked back. I told this colored Patrolman what the woman said and he asked me to show him where the car is, which I did. I indicated the dark brown car and said, "That's the car". At this time I noticed a red car next to the Pontiac (left side as cars face the Ocean) and there were two adults, one man and one woman, and three or four children. These people looked like they were about to leave this area.

The colored Patrolman got out of the Police Car and reached in the back seat for something. When he left the car I noticed he had a red flare in his hand with a spike on the end. I then saw him walk around the front of the Patrol Car and to the left side of the Pontiac. I then turned and looked at the lady who I described above and she walked towards the Pontiac where the Police Officer was. I then looked at one of the small children who was saying something like, "Mommy, whats he doing?" I then looked straight ahead for about three seconds and towards the Pontiac The patrolman was by the right rear of the Pontiac and walking towards the Patrol Car with a broken flare in his hand. He walked around the front of the Police Car and then threw the broken flare into the Police Car- one-half he threw into the front and the other half into the rear. He closed the door and said, "That was a lousy flare". We then drove away and I got out shortly thereafter. The patrol Car then left the field. It was approximately 1245 hrs, when I reached the Zone Office: I looked at the clock and it was 12:45 P.M. I then asked the foreman if I could go to lunch.

The above statement is thue to the best of my knowledge and belief.

WITNESSES: Jack R. Collins
Walter Sorowski

Richard A. Marshall
RICHARD A. MARSHALL

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

JONES BEACH STATION
04 JULY 71 8:15 A.M.

My name is William G. Ross, age #21, and I reside at 209 Prince Ave., Freeport, NY, with my parents, Joshua & Frances Ross, along with my brother Robert.

I am at this time employed by the L.I. State Parkway Police as a Seasonal Patrolman and my shield, assigned to me, is #517. I started as a Seasonal Patrolman on 26 JUNE 71, and it is my first season with this department. I am a college student and study at the N.Y. Institute of Technology.

On 02 JULY 71, I reported to Jones Beach Station for the 9AM - 9PM tour of duty. I was assigned to Field #6 on the shore line due to the life-guard strike.

At about 12:00 P.M., I went to the Zone Office of Parking Field #6 for my lunch period. I sat in the Zone Office, had a soda and was just relaxing. I came out of the Zone Office and was walking around the parking field when I noticed a motor vehicle parked illegally taking up two parking spaces. This car was located in the third row from the front of the parking field and on the west side. I wrote the license plate number down which was 1974 PQ (NY), and it was a metallic green Electra '88.

I saw a Police vehicle pull up to the Concession Buidling and in the vicinity of the Zone Office. I went over to the Police Car and told the Patrolman operating the car about the illegally parked vehicle and requested he issue a summons. He said, "Hop in and I'll take care of that as soon as I finish what I am doing". I got into the back of the car.

The police officer operating the car was a male Negro, about 5'10, medium build, short Afro haircut. On the Police vehicle I noticed prior to getting into it that there was damage to the right front of the car.

This Police Officer went into the Zone Office area for about five minutes and then returned with a parking field attendant who sat in the

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

right front of the car. The attendant instructed the Patrolman where to find a woman that had supposedly almost run him over with her car when she came into the parking field earlier.

We went to the extreme west side of the field where the attendant and Patrolman got out of the car and walked onto the Boardwalk. I then saw the patrolman stay on the boardwalk and the attendant go on to the sand towards the Ocean. I got out of the car and leaned against the Police Car and stayed around the car.

Shortly thereafter, the patrolman and the attendant came back and we all got back into the police car. The attendant told the patrolman where to find the woman's car which was on the west side, fourth or fifth row, from the front of the parking field. They found the vehicle which looked to me like a dark Pontiac LeMans.

The attendant stayed inside the vehicle and the patrolman went to the rear of the Police Car, into the trunk, and took out which I was pretty sure, was a road flare. It was red, about fifteen inches long, black lettering about an inch in diameter, and a sharp metal point on the end. I saw him go to this Pontiac LeMans on the driver's side and stoop down to the left front tire. I couldn't actually see him puncture the tire but I did see the motion of his arm with the flare, as if to strike it. Then he went to the right side and made the same striking motions. Then to the right rear tire and I actually observed him puncture the tire three times. Prior to puncturing this last tire, the flare looked like it was broken. The patrolman then went to the trunk of the Police Car and threw the broken flare in.

While he was puncturing these tires I noticed that there was a woman with two or three children actually observing him commit this act. I assume her vehicle was next to the Pontiac LeMans (east side) and she was standing anywhere from five to eight feet away.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

The patrolman then got into the Police Car and asked me where the vehicle was that I had complained of being illegally parked. We went to the vehicle and he observed the car was taking up two parking spaces, so he issued a parking tag. At this time the attendant left the vehicle, and thanked the patrolman for his help. I then left and went back on patrol.

After being employed for only one week, I was annoyed at this action taken by this patrolman and didn't know what to do or say to anyone.

On 03 JULY 71, I was approached by a detective while working in Parking Field #2, and told him verbally about the above stated incident.

The above is all true to the best of my knowledge and belief.

WITNESSES: Jack H. Collins

W. Otis Dawson

William G. Ross

WILLIAM G. ROSS

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

8 July 1971

TO: Patrolman Randolph Taylor, Shield 189

FROM: Chief Landers

SUBJECT: Notice of Suspension

Pursuant to Article IV, Rule 3, Page 10 of the Rules and Regulations of the Traffic and Park Patrol you are hereby suspended without pay commencing 0001 hours 8 July 1971 from your position as a Traffic and Park Officer pending disposition of criminal charges which have been preferred against you.

Accordingly, you shall surrender your shield, service revolver, and other State property to this department immediately.

Personal firearms which you possess by virtue of your employment with this department must also be surrendered for safe-keeping.

You are reminded that while under suspension you shall maintain daily contact with Headquarters.

Informed re suspension at 0810 + tells. Also departmental charges to be preferred

W. T. Landers
Chief

NTL/

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

9 July 1971

To: Mr. Champ

From; Chief Landers

SUBJECT: Patrolman Randolph Taylor, Shield 189

Patrolman Randolph Taylor of this department was arrested by this department for the misdemeanor of Criminal Mischief at about 8:15 AM on 8 July 1971.

Patrolman Taylor was advised by the undersigned that he was suspended without pay effective at time aforesaid because of his arrest.

N.T. Landers - Chief

NTL/fb

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

1. Warrant issued by Judge Nichoff Dist Court Mineola on 7 July 1971 based on complaint sworn to by:

RHEVA MORRIS - Complainant owner of MV damaged in P.F. #6 J B State Park @ 1225 hrs 2 July 1971.

2. Executed by Det. Norowski at Babylon HQrs at about 8:15 AM on 8 July 1971.

3. Brought before Judge La Perra at about 10:00 AM. and pled Not Guilty, requested early trial, set for July 22nd released in his own custody

4. Taylor requested copy for use of: (4PM 8 July 1971)
   Complaint Form - Ptl Raso
   Parking Tag issued @ about same time
   Statements of witnesses
   Names & addresses of State Worker + Ptl Ross (witnesses)

5. Taylor advised re above: (10AM 9 July 1971)
   AD A Levine stated he must go thru his atty by regular court procedure to obtain any records.

6. Lamberti contacted on 12 July at 233 7th St H.C. at 1605 hrs re formal dept. charges.

7. Trial adjourned @ Taylor request from 7/22 to 7/28 Taylor states his atty requested it!

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

12 July 1971

TO: Mr. Leitch

FROM: Chief Landers

SUBJECT: Suspension--Ptl. Randolph Taylor, #189

The above subject was suspended without pay from his position as Traffic and Park Officer (permanent) effective at 8:15 A. M. 8 July 1971.

It is requested that his paycheck be adjusted accordingly.

N. T. Landers - Chief

NTL/fb
cc: Mr. Gross
Mr. Lacy
Ptl. File ✓

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

14 July 1971

Patrolman Randolph Taylor
2 Sylvan Street
N. Bay Shore, New York 11706

Dear Patrolman Taylor:

Charges of misconduct and failure to comply with the Rules and Regulations of the Traffic and Park Patrol are hereby preferred against you.

Specification 1

While assigned to post 401 in car 2470 at Jones Beach on the 8 AM to 8 PM tour of duty at about 12:30 PM on 2 July 1971 you violated Article IV, Rule 1, C on page 10 of the Rules and Regulations of the Traffic and Park Patrol.

To wit:

By puncturing the sidewalls of three tires on a 1969 Pontiac LeMans, Registration 9639 LB, New York, owned by Rheva Morris, 10 Clent Road, Great Neck, New York, several times each with the pointed end of an emergency flare, while said car was parked in ocean front parking field #6 at Jones Beach.

Specification 2

While assigned to post 401 in car 2470 at Jones Beach on the 8 AM to 8 PM tour of duty at about 12:30 PM on 2 July 1971 you violated Article IV, Rule 1, A and C on page 10 of the Rules and Regulations of the Traffic and Park Patrol.

To wit:

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

You violated Article VI, Paragraph L on page 35a by failing to protect property described in Specification 1, which you deliberately damaged.

Specification 3

While assigned to post 401 in car 2470 at Jones Beach on the 8 AM to 8 PM tour of duty at about 12:30 PM on 2 July 1971 you violated Article IV, Rule 1, G on page 10 of the Rules and Regulations of the Traffic and Park Patrol by misusing departmental property.

To wit:

You did use a departmental flare issued to patrol vehicles for emergency warning use at the scenes of accidents and other emergency conditions to puncture tires on the vehicle described in Specification 1.

You are given until 22 July 1971 to make and file a written answer or explanation of these charges. If you are found guilty of the above charges, you will be subject to dismissal from your position, a fine not exceeding $100.00, suspension from your position without pay for a period not exceeding two months, or a reprimand, as provided within Section 75 of the Civil Service Law.

A hearing on these charges will be held 29 July 1971 at 10 A.M. at Administration Headquarters, Belmont Lake State Park, Babylon, L.I., New York.

Very truly yours,

14 July 1971:
Original to Ptl Taylor
& Headquarters 1120
hours date. (3 pages)

Assistant General Manager

FC/fb

Lt James W Donnelly #9

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

TO: **Commanding Officer, Police Dept., Babylon, N.Y.**

FROM: **Patrolman Randolph Taylor - Shield No. 189**

The undersigned acknowledges receipt of a letter of charges dated 14 July 1971.

Hearing is demanded for submission of matters in mitigation, extenuation and defense.

Plea of guilty is made and a hearing is waived, but matters in mitigation, extenuation and defense are herewith submitted.

Plea of guilty is made and a hearing is waived. No matters in mitigation, extenuation or defense are submitted.

(Cross out two paragraphs)

Patrolman Randolph Taylor

Date

4-21-67 25M (P98887)

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

COPY

LONG ISLAND STATE PARK COMMISSION
BELMONT LAKE STATE PARK
BABYLON, LONG ISLAND

To: Mr. James Manning

You are hereby designated to hold and conduct a hearing on charges of misconduct in violation of the Rules and Regulations of the Traffic & Park Patrol of the Long Island State Park Commission or other dereliction preferred against Patrolman Randolph Taylor of the police force of the Commission and to make a record of such hearing and to refer same with your recommendations to the Commission or to the undersigned General Manager for review and decision and to issue under your hand on behalf of the Commission subpoenas requiring persons to attend such hearing.

S. M. Shapiro

General Manager

Dated: July 15, 1971

4-21-67 25M (P95867)

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION
COPY

LONG ISLAND STATE PARK COMMISSION
BELMONT LAKE STATE PARK
BABYLON, LONG ISLAND

July 16, 1971

James Manning, Esq.
c/o Harold G. Israelson
521 Fifth Avenue - 32nd Floor
New York, New York 10036

Re: Randolph Taylor Charges

Dear Mr. Manning:

In accordance with your request, enclosed are the following:

1. Copy of labor agreement covering permanent police personnel of this Commission - between State and Council 82.

2. Letter of charges to Randolph Taylor dated July 14, 1971.

3. Letter dated July 15, 1971, appointing you as Hearing Officer.

Very truly yours,

Administrative Officer

VL:es
Encl.

cc: Chief Landers

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

INTER-OFFICE MEMO

LONG ISLAND STATE PARK COMMISSION

ADMINISTRATION HEADQUARTERS

BABYLON, N. Y.

HEADQUARTERS DESK: 16 JULY 1971

ANY INQUIRIES REFERENCE TO THE ARREST OF PTL. RANDOLPH TAYLOR WILL BE ANSWERED AS FOLLOOWS:

"PTL. TAYLOR WAS ARRESTED ON A CHARGE OF CRIMINAL MISCHIEF AND HAS BEEN SUSPENDED BY THIS DEPARTMENT PENDING DISPOSITION OF THE CHARGE AGAINST HIM."

WE WILL MAKE NO FURTHER COMMENT.

J Donnelly

Lt. J. Donnelly #9

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

20 July 1971

Patrolman Randolph Taylor
2 Sylvan Street
N. Bay Shore, New York 11706

Dear Patrolman Taylor:

With reference to your Notice of Suspension received by you on 8 July 1971, you are hereby advised that this period of suspension without pay shall continue pending disposition of departmental charges preferred against you in our letter of 14 July 1971.

Very truly yours,

Nicholas T. Landers
Chief

NTL/fb

7/20/71

Original to Ptl. Taylor
@ Headquarters @ 1515 hrs.
7/20/71.

Lt. James W Donnelly.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

TO: Commanding Officer, Police Dept., Babylon, N.Y.

FROM: Patrolman Randolph Taylor - Shield No. 189

The undersigned acknowledges receipt of a letter of charges dated 14 July 1971.

Hearing is demanded for submission of matters in mitigation, extenuation and defense.

~~Plea of guilty is made and a hearing is waived, but matters in mitigation, extenuation and defense are herewith~~ submitted.

~~Plea of guilty is made and a hearing is waived. No matters in mitigation, extenuation or defense are submitted.~~

(Cross out two paragraphs)

Randolph Taylor
Patrolman Randolph Taylor

Date July 21, 1971

Personally received in HQs
@ 1500 hours. 22 July 1971.

Lt James W Donnelly.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

NOW INDICTED

Forward to Court Clerk	State of New York LONG ISLAND STATE PARK COMMISSION State Parkway Police Babylon, L. I., N. Y.	CR 2484/71 Court Docket No.

Surname	First Name	Initial	ID.B. / "T" No.	Date
TAYLOR	Randolph	W.		

Address	Date of Birth
2 Sylvan St. No. Bayshore, N.Y.	11-19-38

Station Arrest No. / Case No.	Charge
SPP-89-1971	Criminal Mischief - 145.00 P.L. 1ST INFORMATION RE-DRAWN.
Place of Arrest: Babylon, N.Y. Place of Occurrence: Jones Beach	

Date of Disposition	Final Charge
7/28/71	Same

I hereby certify that this is an extract of a record on file in the District Court of the County of _____.

Clerk of the Court

Disposition: Dismissed

Judge and Court: Hon. James F. Niehoff

SPP 217.2 10/3/69

Court Clerk: Complete and Return to:
L. I. State Parkway Police
Babylon, New York

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

Forward to Court Clerk	State of New York LONG ISLAND STATE PARK COMMISSION State Parkway Police Babylon, L. I., N. Y.	OF Court Docket No.

Surname	First Name	Initial	I.D.B. / "T" No.	Date
TAYLOR	RANDOLPH	W.		

Address	Date of Birth
2 SYLVAN ST. NO. BAYSHORE, N.Y.	11-19-38

Station Arrest No.	Charge
SPP-89-1971	CRIMINAL MISCHIEF - 145:00 P.L.
Case No.	
	1ST INFORMATION FOR ARRAIGN
Place of Arrest BABYLON, N.Y.	
Place of Occurrence JONES BEACH	

Date of Disposition	Final Charge
7/28/78	Same

I hereby certify that this is an extract of a record on file in the District Court of the County of _____. Clerk of the Court	Disposition Dismissed
	Judge and Court Hon. James F. Nieboff

SPP
217.2 10/3/69

Court Clerk: Complete and Return to:
L. I. State Parkway Police
Babylon, New York

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

July 28, 1971

James Manning, Esq., Hearing Officer
c/o Harold G. Israelson
521 Fifth Ave. - 32nd Floor
New York, N.Y. 10036

Dear Mr. Manning:

Re: Patrolman Randolph Taylor
Disciplinary Proceedings

I hereby request that the hearing of the charges in the above proceedings which is scheduled for July 29, 1971 at 10 A.M. at the Administration Headquarters, Belmont Lake State Park Babylon, L.I., New York be adjourned to September 9th 1971 at the same time and place.

Pending the hearing and determination of said charges, I agree to remain on leave of absence from duty, without pay.

Very truly yours,

Randolph Taylor

Agreed to and accepted by

For the Long Island State Park Comm.

Granted by

James Manning Esq.
Hearing Officer

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

STATE OF NEW YORK

LONG ISLAND STATE PARK COMMISSION

STATE PARKWAY POLICE

SPECIAL REPORT

STATION Jones Beach N. Y.

2 August 19 71

Subject: RESIGNATION

To: Commanding Officer, Babylon, N. Y.

1. The undersigned patrolman respectfully requests that his resignation be tendered, effective as of the close of business 7 July 1971.

2. My reason for leaving is due to my anticipated move to the State of Virginia.

Respectfully submitted,

8/2/71

Approved

MJL

Randolph Taylor #189

Ptl. Shield #

SPP 236 - 25 June 1969

4-21-67 25M (P05657)

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

COPY

LONG ISLAND STATE PARK COMMISSION
BELMONT LAKE STATE PARK
BABYLON, LONG ISLAND

cc: Chief Landers
Mr. Gross

August 2, 1971

Thomas Lamberti, Esq.
233 7th Street
Garden City, N. Y.

Dear Mr. Lamberti:

Enclosed is a copy of resignation of Traffic and Park Officer Randolph Taylor effective close of business July 7, 1971. Mr. Taylor was suspended without pay on July 8, 1971, pending a hearing on charges specified in our letter of July 14, 1971. As Patrolman Taylor has resigned, we do not plan any further action. Please let us know if you have any suggestions in this matter.

Your help has been appreciated.

Very truly yours,

Administrative Officer

VL:es
Encl.
cc: James Manning, Esq.

P.S. Please submit a statement of fees covering your services in this case.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

4 August 1971

TO WHOM IT MAY CONCERN:

Randolph Taylor was employed by this department as a Traffic and Park Patrolman from 12 May 1966 to 7 July 1971.

He resigned his position to relocate in the state of Virginia.

N. T. Landers - Chief

by: J. W. Donnelly
Headquarters Lieutenant

JWD/fb

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

2 Sylvan St.
Bayshore N.Y. 11706
September 20, 1971

Chief N. T. Landers
State Parkway Police
Babylon, N.Y.

Dear Sir:

The undersigned requests that resignation submitted July 7, 1971, be rescinded. Please advise when to report.

Respectfully
Randolph Taylor

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

22 September 1971

Mr. Randolph Taylor
2 Sylvan Street
Bay Shore, New York 11706

Dear Mr. Taylor:

Your resignation effective 7 July 1971 has been accepted as submitted, therefore your request to rescind it is disapproved.

Very truly yours,

Nicholas T. Landers
Chief

NTL/fb

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

L.I. PRESS

V. 30, 1971

Ex-Cop Fined $100

A former Long Island State Parkway policeman — now living in North Carolina — pleaded guilty to harassment charges yesterday in Mineola District Court.

Randolph W. Taylor, 32, once claimed the Bay Shore Fire Department discriminated against him when he sought to join it and the department was ordered to accept Taylor as a member by the State Human Rights Commission.

Before the fire department could react to the order, Taylor was accused of letting the air out of the tires of a car at Jones Beach. He was arrested and charged with malicious mischief and was suspended from the parkway police.

He then moved to North Carolina, ending his dispute with the Bay Shore Fire Department.

Taylor, who also resigned from the force, appeared yesterday before Judge John Lockman on a reduced charge of harassment. Taylor was ordered to pay a fine of $100 by Dec. 15.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

A C 315 REV 3/60
DEPARTMENT OF AUDIT AND CONTROL
DEPARTMENT OF CIVIL SERVICE

FOLLOW DETAILED INSTRUCTIONS IN MAKING ENTRIES ON THIS FORM

PAYROLL AND PERSONNEL TRANSACTION FORM PR-75

FOR USE OF DEPARTMENT OF AUDIT & CONTROL ONLY

01	GROSS & ANNUAL	34	RELEASE – TERMINATION	AGENCY CONTROL NUMBER 12-5
01	GROSS	31	RELEASE – TRANSFER	
01	ANNUAL (38-47)	32	RELEASE – TEMPORARY	
01	GR & ANN X78 (NAME 11-25/48-62)	33	TITLE (GR 28-37/TITLE 48-62)	GROUP ☒ 1 ☐ 2
49	LINE CHANGE (NEW 28-37)	S	SUMMARY	
35	NAME CHANGE (NEW 48-62)	ST	SUMM TRANSFER	

1 DEPT 09 DIVISION 02 PAYROLL AGENCY: Long Island State Park Commission — BUREAU:

2 LINE NUMBER 2905 — 3 NAME — FIRST NAME: Randolph — MIDDLE INITIAL: — LAST NAME: Taylor

4 LINE NUMBER CHANGED TO — 5 NAME CHANGED TO — FIRST NAME: — MIDDLE INITIAL: — LAST NAME:

6 GROSS SALARY (ADD) — (COLS 28-37): — ANNUAL SALARY (COLS. 38-47): 7984 — (BASE SALARY): — (ADJUSTMENT): — 10-MOS SAL.–X75 (COLS 38-47):

7 PREV. PERIOD GROSS SALARY (DEDUCT) — (COLS 28-37): — 8 GRADE (COLS 28-37): 14 — TITLE – (COLS 48-62): Traffic & Park Officer

9 NAME OF STATE AGENCY WHERE LAST EMPLOYED (IF ANY): — 10 DATE OF LAST CHECK:

11 GEOGRAPHIC LOCATION: Babylon — JURISDICTIONAL CLASS: C — 12 EFFECTIVE DATE: 8/22/68

13 APPOINTMENT FROM LIST — LIST NO — SERIAL — TITLE OF LIST — 14 DURATION ☒ PERMANENT ☐ TEMPORARY

15 NOMINATION FOR APPOINTMENT – APPLICATION ON OTHER SIDE MUST BE COMPLETED IF RULES BELOW ARE USED

- ☐ §52-7 (FORMERLY RULE XIV-4) NON-COMPETITIVE PROMOTION
- ☐ §65 (FORMERLY RULE VIII-4) PROVISIONAL APP'T OR PROM
- ☐ RULE 6 (FORMERLY RULE XIX-1) NON-COMPETITIVE CLASS APPOINTMENT
- ☐ RULE 21-2 (FORMERLY RULE VIII-10) APP'T WHEN EXAMINATION DOES NOT PROVIDE LIST
- ☐ RULE 25 (FORMERLY RULE VIII-9) EXCEPTIONAL APPOINTMENT
- ☐ RULE 27 (FORMERLY RULE XIII-2) APP'T. PENDING CANVASS OF LIST
- ☐ OTHER RULES: STATE RULE _____ AND EXPLAIN IN REMARKS

16 TRANSFER FROM (AGENCY) _____ (WITH EMPLOYEE'S CONSENT AND THE APPROVAL OF THE AGENCY NAMED ABOVE) — 17 STATUS CHANGE ☐ REINSTATEMENT ☐ DEMOTION

18 REMARKS

Disciplinary Fine $25.00

Notice to Civil Service dated August 22, 1968.

19 THIS ITEM FOR CIVIL SERVICE USE AS REQUIRED

☐ APPROVED ON TRAINING AND/OR EXPERIENCE ☐ DISAPPROVED

☐ WRITTEN ☐ ORAL ☐ W W

NO _____ DATE _____

TITLE _____

SCORE _____ ADD SCORE _____

EXAMINER _____

ADM DIRECTOR _____

VACANT ☐ P V ☐ T V — FILLED ☐ A PROV ☐ B PROV.

CERTIFICATE VALID UNTIL (DATE)

THIS CERTIFIES THAT THE ABOVE EMPLOYMENT IS IN ACCORDANCE WITH LAW AND RULES MADE IN PURSUANCE TO LAW SUBJECT TO ANY LIMITATION OR CONDITION SPECIFIED ABOVE

BY _____

DATE _____

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

A. C. 315B
DEPARTMENT OF AUDIT AND CONTROL
DEPARTMENT OF CIVIL SERVICE

FOLLOW DETAILED INSTRUCTIONS IN MAKING ENTRIES ON THIS FORM

PAYROLL AND PERSONNEL TRANSACTION FORM PR-75B

FOR USE OF THE DEPARTMENT OF AUDIT AND CONTROL ONLY

01	ANNUAL (38-47)	32	RELEASE - TEMPORARY	
01	GR. & ANN. - X78 (NAME 11-25 48-62)	33	TITLE (GR 28-37 TITLE 48-62)	
49	LINE CHANGE (NEW 28-37)	S	SUMMARY	
35	NAME CHANGE (NEW 48-62)	ST	SUMMARY TRANSFER	

B17- 2

GROUP 1 ☐ 2 ☒ 3 ☐

1	DEPT. 09	DIVISION 02	PAYROLL AGENCY: Long Island State Park Commission							
2	LINE NUMBER 2905	3	NAME	FIRST NAME: Randolph	MIDDLE INITIAL	LAST NAME: Taylor				
4	LINE NUMBER CHANGED TO	5	NAME CHANGED TO	FIRST NAME	MIDDLE INITIAL	LAST NAME				
6	GROSS SALARY (ADD) (COLS.28-37)		7	ANNUAL SAL. (COLS. 38-47): 7984	10 MOS. SAL. X-75 (COLS. 38-47)	8	RATE (COLS. 38-47) (DAILY OR HOURLY)	9	TIME WORKED (HRS. OR DAYS)	
10	PREV. PERIOD GROSS SALARY (DEDUCT) (COLS. 28-37)		11	GRADE (COLS. 28-37): 14	TITLE (COLS. 48-62): Traffic & Park Officer					
12	NAME OF STATE AGENCY WHERE LAST EMPLOYED (IF ANY)		13	DATE OF LAST CHECK	14	NATURE OF ACTION (USE CODE): LA*	15	EFFECTIVE DATE: 11/7/68		
16	REMARKS: Leave of Absence Without Pay extended through December 4, 1968.									

CERTIFICATE VALID UNTIL _____ (DATE)

THIS CERTIFIES THAT THE ABOVE EMPLOYMENT IS IN ACCORDANCE WITH LAW AND RULES MADE IN PURSUANCE TO LAW, SUBJECT TO ANY LIMITATION OR CONDITION SPECIFIED ABOVE.

BY _____

DATE _____

ROSTER POSTED BY _____ DATE _____

COPY 4

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

A. C. 315B
DEPARTMENT OF AUDIT AND CONTROL
DEPARTMENT OF CIVIL SERVICE

FOLLOW DETAILED INSTRUCTIONS IN MAKING ENTRIES ON THIS FORM

PAYROLL AND PERSONNEL TRANSACTION FORM PR-75B

FOR USE OF THE DEPARTMENT OF AUDIT AND CONTROL ONLY

	01	GROSS AND ANNUAL		31	RELEASE - TRANSFER
	01	ANNUAL (38-47)		32	RELEASE - TEMPORARY
	01	GR. & ANN. - X78 (NAME 11-25 48-62)		33	TITLE (GR 28-37 TITLE 48-62)
	49	LINE CHANGE (NEW 28-37)		S	SUMMARY
	35	NAME CHANGE (NEW 48-62)		ST	SUMMARY TRANSFER

AGENCY CONTROL NUMBER 13-8

GROUP ☐ 1 ☒ 2 ☐ 3

1	DEPT. 09	DIVISION 02	PAYROLL AGENCY: Long Island State Park Commission					
2	LINE NUMBER 2905	3	NAME	FIRST NAME Norbert	MIDDLE INITIAL	LAST NAME Taylor		
4	LINE NUMBER CHANGED TO	5	NAME CHANGED TO	FIRST NAME	MIDDLE INITIAL	LAST NAME		
6	GROSS SALARY (ADD) (COLS. 28-37)		7	ANNUAL SAL (COLS. 38-47) 7984	10 MOS. SAL. X-75 (COLS. 38-47)	8	RATE (COLS. 38-47) (DAILY OR HOURLY)	9 TIME WORKED (HRS. OR DAYS)
10	PREV. PERIOD GROSS SALARY (DEDUCT) (COLS. 28-37) 12 21		11	GRADE (COLS. 28-37) 14	TITLE (COLS. 48-62) Traffic & Pk. Officer			
12	NAME OF STATE AGENCY WHERE LAST EMPLOYED (IF ANY)		13	DATE OF LAST CHECK	14	NATURE OF ACTION (USE CODE) Susp.	15	EFFECTIVE DATE 2/3/58
16	REMARKS: Suspended - Sec 72 Civil Service Law - pending determination of charges (not exceeding 30 days)							

CERTIFICATE VALID UNTIL _____ (DATE)

THIS CERTIFIES THAT THE ABOVE EMPLOYMENT IS IN ACCORDANCE WITH LAW AND RULES MADE IN PURSUANCE TO LAW, SUBJECT TO ANY LIMITATION OR CONDITION SPECIFIED ABOVE.

BY _____

DATE _____

ROSTER POSTED BY _____ DATE _____

COPY 4

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

A C 339 REV 11/67
DEPARTMENT OF AUDIT AND CONTROL
DEPARTMENT OF CIVIL SERVICE

PLEASE FOLLOW DETAILED INSTRUCTIONS IN MAKING ENTRIES ON THIS FORM

PAYROLL AND PERSONNEL TRANSACTION FORM PR-75

FOR USE OF DEPARTMENT OF AUDIT & CONTROL ONLY

01	GROSS & ANNUAL	34	RELEASE TERMINATION	ACCT CONTROL NUMBER 21- /
01	GROSS	41	RELEASE TRANSFER	
01	ANNUAL (38-47)	32	RELEASE TEMPORARY	
01	GR & ANN (X78 (NAME 11-25/48-62)	33	TITLE (GR 28-37/TITLE 48-62)	GROUP 1 [X] 2 [ ]
49	LINE CHANGE (NEW 28-37)	S	SUMMARY	
35	NAME CHANGE (NEW 48-62)	ST	SUMM TRANSFER	

1	DEPT 09	DIVISION 02	PAYROLL AGENCY Long Island State Park Commission			BUREAU	
2	LINE NUMBER 2905	3 NAME	FIRST NAME Randolph	MIDDLE INITIAL	LAST NAME Taylor		
4	LINE NUMBER CHANGED TO	5 NAME CHANGED TO	FIRST NAME	MIDDLE INITIAL	LAST NAME		
6	GROSS SALARY (ADD) (COLS 28-37) 306 23	ANNUAL SALARY (COLS 38-47) 7984	BASE SALARY	ADJUSTMENT	10-MOS SA. X75 (COLS 38-47)		
7	PREV PERIOD GROSS SALARY (DEDUCT) (COLS 28-37)	8 GRADE (COLS 28-37) 14	TITLE — (COLS 48-62) Traffic & Park Officer				
9	NAME OF STATE AGENCY WHERE LAST EMPLOYED (IF ANY)		10 DATE OF LAST CHECK 9/11/68				
11	GEOGRAPHIC LOCATION Babylon	JURISDICTIONAL CLASS C	12 EFFECTIVE DATE 1/2/69				
13	APPOINTMENT FROM LIST — LIST NO — SERIAL — TITLE OF LIST		14 DURATION [X] PERMANENT [ ] TEMPORARY				

15 NOMINATION FOR APPOINTMENT — APPLICATION ON OTHER SIDE MUST BE COMPLETED IF RULES BELOW ARE INDICATED

- [ ] §52-7 (FORMERLY RULE XIV-4) NON-COMPETITIVE PROMOTION
- [ ] §65 (FORMERLY RULE VIII-4) PROVISIONAL APP'T OR PROM
- [ ] RULE 6 (FORMERLY RULE XIX-1) NON-COMPETITIVE CLASS APPOINTMENT
- [ ] RULE 21-2 (FORMERLY RULE VIII-10) APP'T WHEN EXAMINATION DOES NOT PROVIDE LIST
- [ ] RULE 25 (FORMERLY RULE VIII-9) EXCEPTIONAL APPOINTMENT
- [ ] RULE 27 (FORMERLY RULE XIII-2) APP'T PENDING CANVASS OF LIST
- [ ] OTHER RULES STATE RULE _____ AND EXPLAIN IN REMARKS

16 TRANSFER FROM (AGENCY) _____ (WITH EMPLOYEE'S CONSENT AND THE APPROVAL OF THE AGENCY NAMED ABOVE)

17 STATUS CHANGE [X] REINSTATEMENT OF MOTION

18 REMARKS

19 THIS ITEM FOR CIVIL SERVICE USE AS REQUIRED

- [ ] APPROVED ON TRAINING AND/OR EXPERIENCE
- [ ] DISAPPROVED
- [ ] WRITTEN [ ] ORAL [ ] W W

NO _____ DATE _____

TITLE _____

_____ ADJ SCORE _____

EXAMINER _____

VACANCY [ ] P V [ ] T V

PETITION [ ] A PROV [ ] P PROV

ADM DIRECTOR _____

CERTIFICATE VALID UNTIL _____ DATE

THIS CERTIFIES THAT THIS APPOINTMENT/PROMOTION IS IN ACCORDANCE WITH LAW AND RULES MADE IN PURSUANCE TO LAW SUBJECT TO ANY LIMITATION OR CONDITION SPECIFIED ABOVE

BY _____

DATE _____

APPROVED _____ DATE _____

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

A. C. 315B
DEPARTMENT OF AUDIT AND CONTROL
DEPARTMENT OF CIVIL SERVICE

FOLLOW DETAILED INSTRUCTIONS IN MAKING ENTRIES ON THIS FORM

PAYROLL AND PERSONNEL TRANSACTION FORM PR-75B

FOR USE OF THE DEPARTMENT OF AUDIT AND CONTROL ONLY — VOUCHER NO.

	01	GROSS AND ANNUAL	34	RELEASE - TRANSFER	NO./SER.
	01	GROSS	31	RELEASE - TRANSFER	
	01	ANNUAL (38-47)	32	RELEASE - TEMPORARY	GROUP
	01	GR. & ANN. - X78 (NAME 11-25 48-62)	33	TITLE (GR 28-37 TITLE 48-62)	☐ 1 ☒ 2 ☐ 3
	49	LINE CHANGE (NEW 28-37)	S	SUMMARY	
	35	NAME CHANGE (NEW 40-62)	ST	SUMMARY TRANSFER	

1	DEPT. 09	DIVISION 02	PAYROLL AGENCY: Long Island State Park Commission						
2	LINE NUMBER 2905	3	NAME	FIRST NAME: Randolph	MIDDLE INITIAL	LAST NAME: Taylor			
4	LINE NUMBER CHANGED TO	5	NAME CHANGED TO	FIRST NAME	MIDDLE INITIAL	LAST NAME			
6	GROSS SALARY (ADD) (COLS.28-37)		7	ANNUAL SAL. (COLS. 38-47): 7984	10 MOS. SAL. X-75 (COLS. 38-47)	8	RATE (COLS. 38-47) (DAILY OR HOURLY)	9	TIME WORKED (HRS. OR DAYS)
10	PREV. PERIOD GROSS SALARY (DEDUCT) (COLS. 28-37)		11	GRADE (COLS. 28-37): 14	TITLE (COLS. 48-62): Traff & Park Officer				
12	NAME OF STATE AGENCY WHERE LAST EMPLOYED (IF ANY)		13	DATE OF LAST CHECK	14	NATURE OF ACTION (USE CODE): LA*	15	EFFECTIVE DATE: 10/3/68	
16	REMARKS: Leave of absence without pay through 11/6/68								

CERTIFICATE VALID UNTIL _____ (DATE)

THIS CERTIFIES THAT THE ABOVE EMPLOYMENT IS IN ACCORDANCE WITH LAW AND RULES MADE IN PURSUANCE TO LAW, SUBJECT TO ANY LIMITATION OR CONDITION SPECIFIED ABOVE.

BY _____

DATE _____

POSTED
POSTED BY DATE

COPY 4

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

A. C 315 REV. 3/60
DEPARTMENT OF AUDIT AND CONTROL
DEPARTMENT OF CIVIL SERVICE

FOLLOW DETAILED INSTRUCTIONS IN MAKING ENTRIES ON THIS FORM

PAYROLL AND PERSONNEL TRANSACTION FORM PR-75

FOR USE OF DEPARTMENT OF AUDIT & CONTROL ONLY

	01	GROSS & ANNUAL	34	RELEASE - TERMINATION	AGENCY CONTROL NUMBER 12-
	01	GROSS	31	RELEASE - TRANSFER	
	01	ANNUAL (38-47)	32	RELEASE - TEMPORARY	
	01	GR & ANN. X78 (NAME 11-25/48-62)	33	TITLE (GR 26-37/TITLE 48-62)	GROUP ☒ 1 ☐ 2
	49	LINE CHANGE (NEW 26-37)	S	SUMMARY	
	39	NAME CHANGE (NEW 48-62)	ST	SUMM TRANSFER	

1	DEPT 09	DIVISION 02	PAYROLL AGENCY Long Island State Park Commission			BUREAU		
2	LINE NUMBER 2905	3	NAME	FIRST NAME Randolph	MIDDLE INITIAL	LAST NAME Taylor		
4	LINE NUMBER CHANGED TO	5	NAME CHANGED TO	FIRST NAME	MIDDLE INITIAL	LAST NAME		
6	GROSS SALARY (ADD)	(COLS 26-37)	ANNUAL SALARY (COLS 38-47) 7904	(BASE SALARY)	(ADJUSTMENT)	10-MOS SAL.—X78 (COLS 38-47)		
7	PREV. PERIOD GROSS SALARY (DEDUCT)	(COLS 26-37) 304.23	8	GRADE (COLS. 26-37) 14	TITLE—(COLS 48-62) Traffic & Park Officer			
9	NAME OF STATE AGENCY WHERE LAST EMPLOYED (IF ANY)				10	DATE OF LAST CHECK		
11	GEOGRAPHIC LOCATION Babylon		JURISDICTIONAL CLASS C	12	EFFECTIVE DATE 8/22/68			
13	APPOINTMENT FROM LIST	LIST NO	SERIAL	TITLE OF LIST	14	DURATION ☒ PERMANENT ☐ TEMPORARY		

15 NOMINATION FOR APPOINTMENT—APPLICATION ON OTHER SIDE MUST BE COMPLETED IF RULES BELOW ARE USED

- ☐ 52.7 (FORMERLY RULE XIV-4) NON-COMPETITIVE PROMOTION
- ☐ 65 (FORMERLY RULE VIII-4) PROVISIONAL APP'T OR PROM
- ☐ RULE 6 (FORMERLY RULE XIX-1) NON-COMPETITIVE CLASS APPOINTMENT
- ☐ RULE 21.2 (FORMERLY RULE VIII-10) APP'T WHEN EXAMINATION DOES NOT PROVIDE LIST
- ☐ RULE 25 (FORMERLY RULE VIII-9) EXCEPTIONAL APPOINTMENT
- ☐ RULE 27 (FORMERLY RULE XIII-2) APP'T PENDING CANVASS OF LIST
- ☐ OTHER RULES STATE RULE _____ AND EXPLAIN IN REMARKS

16 TRANSFER FROM (AGENCY) _____ (WITH EMPLOYEE'S CONSENT AND THE APPROVAL OF THE AGENCY NAMED ABOVE)

17 STATUS CHANGE ☐ REINSTATEMENT ☐ DEMOTION

18 REMARKS

Disciplinary Fine $25.00

Notice to Civil Service dated August 22, 1966.

19 THIS ITEM FOR CIVIL SERVICE USE AS REQUIRED

☐ APPROVED ON TRAINING AND/OR EXPERIENCE ☐ DISAPPROVED

☐ WRITTEN ☐ ORAL ☐ W

NO. _____ DATE _____

TITLE _____

SCORE _____ ADD SCORE _____

EXAMINER _____

VACANT ☐ PV ☐ V

FILLED ☐ A PROV ☐ R PROV.

AIM DIRECTION _____

CERTIFICATE VALID UNTIL _____ (DATE)

THIS IS TO CERTIFY THAT THE ABOVE EMPLOYMENT IS IN ACCORDANCE WITH LAW AND RULES MADE IN PURSUANCE TO LAW SUBJECT TO ANY LIMITATION OR CONDITION SPECIFIED ABOVE

BY _____ DATE _____

(SIGNATURE) (DATE) (SIGNATURE) (DATE) (SIGNATURE) (DATE)

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

A. C. 315B
DEPARTMENT OF AUDIT AND CONTROL
DEPARTMENT OF CIVIL SERVICE

FOLLOW DETAILED INSTRUCTIONS IN MAKING ENTRIES ON THIS FORM

PAYROLL AND PERSONNEL TRANSACTION FORM PR-75B

	01	ANNUAL (38-47)	32	RELEASE - TEMPORARY
	01	GR. & ANN. - X78 (NAME 11-25 48-62)	33	TITLE (GR 28-37 TITLE 48-62)
	49	LINE CHANGE (NEW 26-37)	S	SUMMARY
	35	NAME CHANGE (NEW 48-62)	ST	SUMMARY TRANSFER

B27-2

GROUP: ☐ 1 ☒ 2 ☐ 3

1	DEPT. 09	DIVISION 02	PAYROLL AGENCY: Long Island State Park Commission						
2	LINE NUMBER 2905	3	NAME	FIRST NAME: Randolph	MIDDLE INITIAL	LAST NAME: Taylor			
4	LINE NUMBER CHANGED TO	5	NAME CHANGED TO	FIRST NAME	MIDDLE INITIAL	LAST NAME			
6	GROSS SALARY (ADD) (COLS.28-37)		7	ANNUAL SAL. (COLS. 38-47): 7984	10 MOS. SAL. X-75 (COLS. 38-47)	8	RATE (COLS. 38-47) (DAILY OR HOURLY)	9	TIME WORKED (HRS. OR DAYS)
10	PREV. PERIOD GROSS SALARY (DEDUCT) (COLS. 28-37)		11	GRADE (COLS. 28-37): 14	TITLE (COLS. 48-62): Traffic & Park Officer				
12	NAME OF STATE AGENCY WHERE LAST EMPLOYED (IF ANY)		13	DATE OF LAST CHECK	14	NATURE OF ACTION (USE CODE): LA*	15	EFFECTIVE DATE: 11/7/68	
16	REMARKS: Leave of Absence Without Pay extended through December 4, 1968.								

CERTIFICATE VALID UNTIL _____ (DATE)	THIS CERTIFIES THAT THE ABOVE EMPLOYMENT IS IN ACCORDANCE WITH LAW AND RULES MADE IN PURSUANCE TO LAW, SUBJECT TO ANY LIMITATION OR CONDITION SPECIFIED ABOVE. BY _____ DATE _____
ROSTER POSTED BY _____ DATE _____	

COPY 4

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

A. C. 315B
DEPARTMENT OF AUDIT AND CONTROL
DEPARTMENT OF CIVIL SERVICE

FOLLOW DETAILED INSTRUCTIONS IN MAKING ENTRIES ON THIS FORM

PAYROLL AND PERSONNEL TRANSACTION FORM PR-75B

FOR USE OF THE DEPARTMENT OF AUDIT AND CONTROL ONLY

	01	[illegible]		31	[illegible] TRANSFER
	01	ANNUAL (38-47)		32	RELEASE TEMPORARY
	01	GR. & ANN. - X78 (NAME 11-25 62)		33	TITLE (OR 28-37 TITLE 48-62)
	49	LINE CHANGE (NEW 28-37)		S	SUMMARY
	35	NAME CHANGE (NEW 48		ST	SUMMARY TRANSFER

NUMBER - 8

GROUP: 1 [ ] 2 [X] 3 [ ]

1	DEPT. 09	DIVISION 02	PAYROLL AGENCY: Long Island State Park Commission					
2	LINE NUMBER 1904	3	NAME	FIRST NAME Rando[illegible]	MIDDLE INITIAL	LAST NAME [illegible]y Jr		
4	LINE NUMBER CHANGED TO	5	NAME CHANGED TO	FIRST NAME	MIDDLE INITIAL	LAST NAME		
6	GROSS SALARY (ADD) (COLS. 28-37)		7	ANNUAL SAL. (COLS. 38-47) 7984	10 MOS. SAL. X-75 (COLS. 38-47)	8	RATE (COLS. 38-47) (DAILY OR HOURLY)	9 TIME WORKED (HRS. OR DAYS)
10	PREV. PERIOD GROSS SALARY (DEDUCT) (COLS. 28-37) 12 21		11	GRADE (COLS. 28-37) 24	TITLE (COLS. 48-62) Traffic & Pk. Officer			
12	NAME OF STATE AGENCY WHERE LAST EMPLOYED (IF ANY)				13 DATE OF LAST CHECK	14	NATURE OF ACTION (USE CODE) Susp.	15 EFFECTIVE DATE 9/3/68
16	REMARKS: Suspended - Sec 75 Civil Service Law - pending determination of charges (not exceeding 30 days)							

CERTIFICATE VALID UNTIL _____ (DATE)

THIS CERTIFIES THAT THE ABOVE EMPLOYMENT IS IN ACCORDANCE WITH LAW AND RULES MADE IN PURSUANCE TO LAW, SUBJECT TO ANY LIMITATION OR CONDITION SPECIFIED ABOVE.

BY _____

DATE _____

ROSTER POSTED BY _____ DATE _____

COPY 4

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

Subpoena
Denise A Mather
For Comm Hearing

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

10-7-65

Insp R. Richards James
re Taylor reporting a
2 cal auto stolen
from his home. He lost
now it 0 cal x 4 reported
it stolen 60 cal.

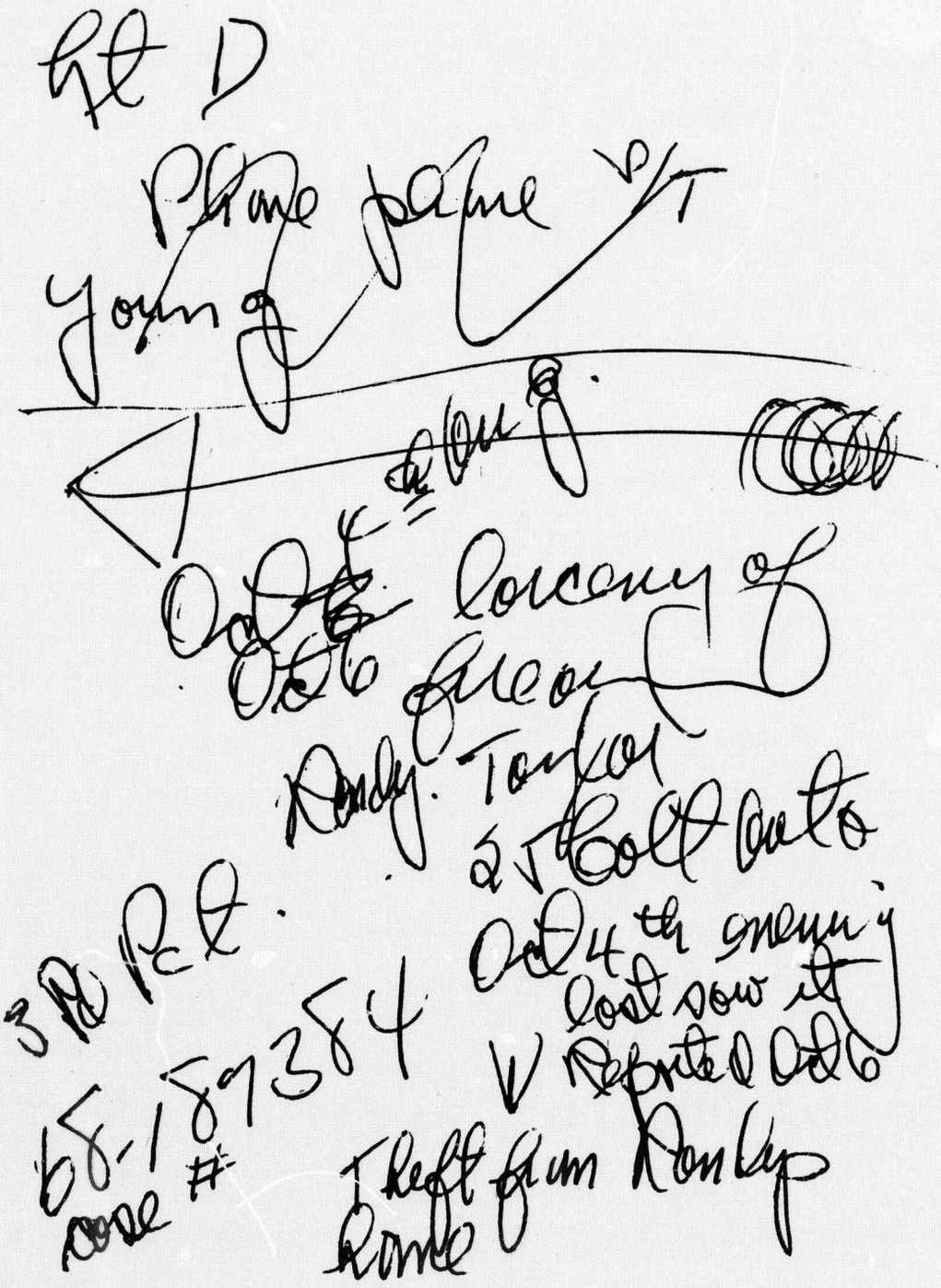
He gave full the
name of a suspect from
NYC who had a gun
record.

Full continuing
investigation: Was advised
that he is not a police
officer and we pick up
the person gun & rifle

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

as well as our armed gun a shield.

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

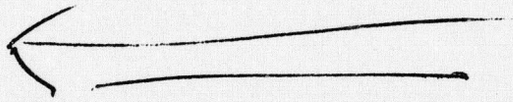


DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

10-4

Taylor asked
for 25 Oct.

notice from Rall
etc



DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

adj Adj 4

Nuccio

Poore

Taylor

9-28

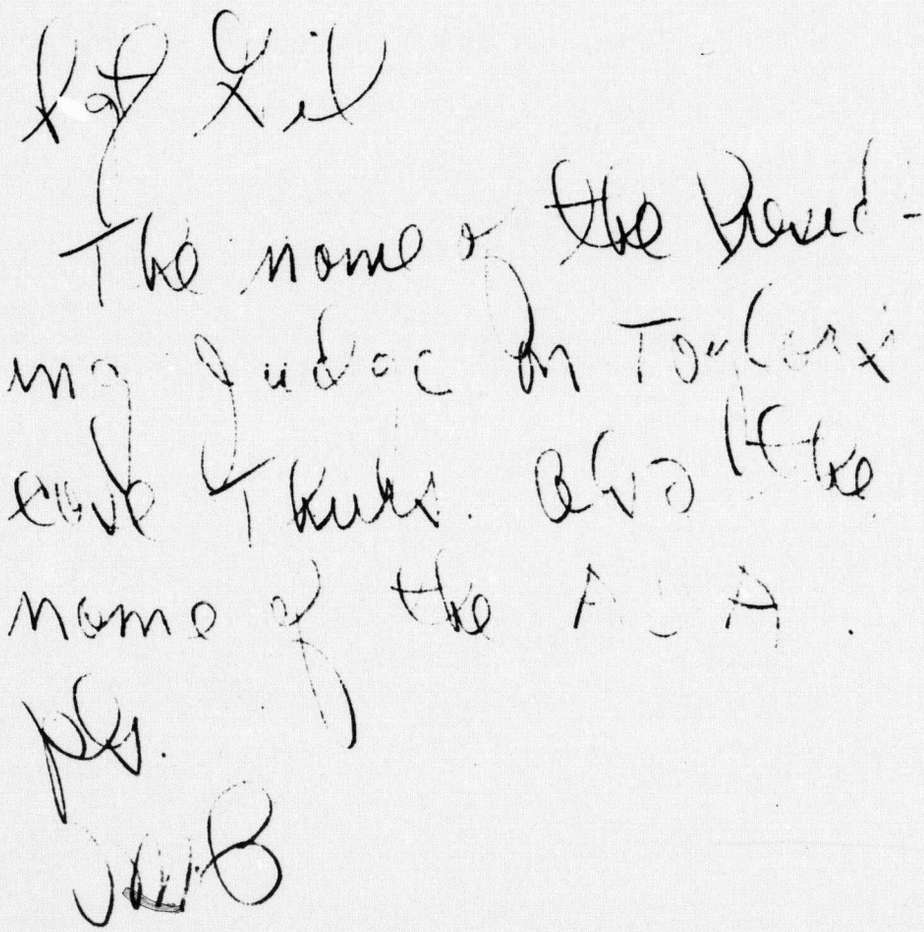
Mc D admitted

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

Memorandum from [illegible]
Dated
5-30-68

MR ISHMAN/AM
Add quote to Taylor

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION



DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

Check for me re Taylor
Re roll
request for a certified copy of Board's
memo to be signed & her
motion - Ode re denying
Mm. 6

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

TAYLOR

SWOP in Sept

Would get credit
for 14 days to 3/21/69
if he worked all
~~that time~~

No credits
for while
suspended

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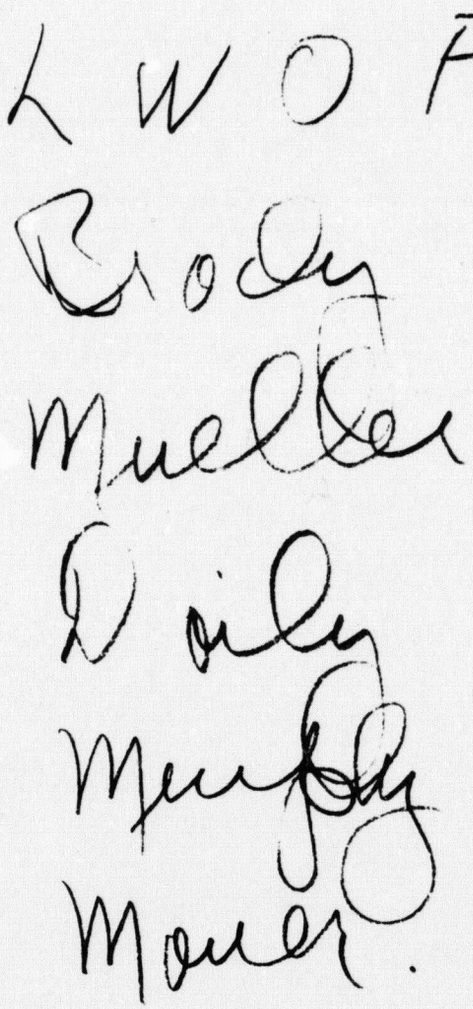
aug 14
Allow for 10 days

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION



DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

Def. MAY TU 8-8031

Taylor 406-3719

1140
1120
1141
1310
1320

Mrs Jean Woodington
798-1324

DEFENDANT'S EXHIBIT CK FOR IDENTIFICATION

Taylor witness
Norwood ✓ Cokely
Gibson ✓ McCandless
Cobham ? ✗
Decker -
Dessino ? ✓ ✗
Serrato ? ?

Service of two copies of
the within is
hereby admitted this day
of , 197

Attorney for

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Linda Gershenowitz